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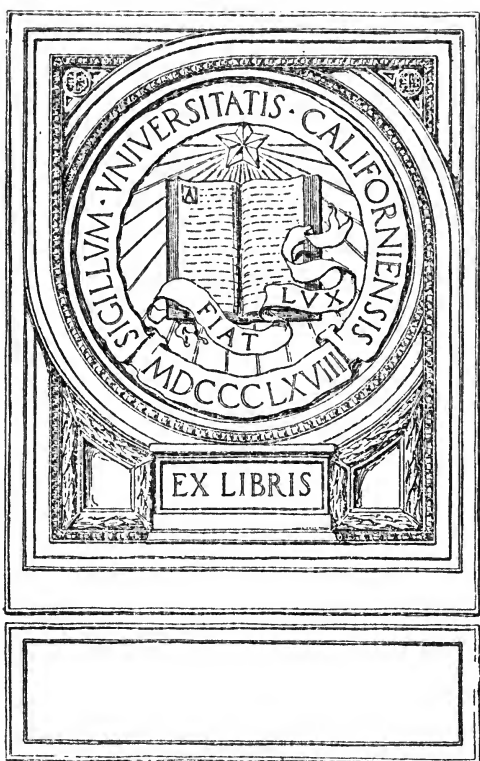
THE
EXCESS PROFITS DUTY
AND
PROFITS OF CONTROLLED ESTABLISHMENTS.

BY
SPICER & PEGLER,
CHARTERED ACCOUNTANTS.

FIFTH EDITION, REVISED AND ENLARGED.

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1920



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BY

ERNEST EVAN SPICER, F.C.A.,

AND

ERNEST C. PEGLER, F.C.A.,

Of the Firm of SPICER & PEGLER, Chartered Accountants, London.

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PREFACE TO FIFTH EDITION.

IN preparing this Edition for the Press, opportunity has been taken to thoroughly revise the Text in the light of further considerable experience.

The provisions of the Finance Act, 1919, have been incorporated, and due note has been taken of all legal decisions of importance up to the time of going to Press.

The thanks of the authors are due to Mr. E. A. McNeill, who in addition to reading the Proofs, has been of considerable assistance in the work of revision.

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1, MANSION HOUSE STREET,
LONDON, E.C.2,
January, 1920.

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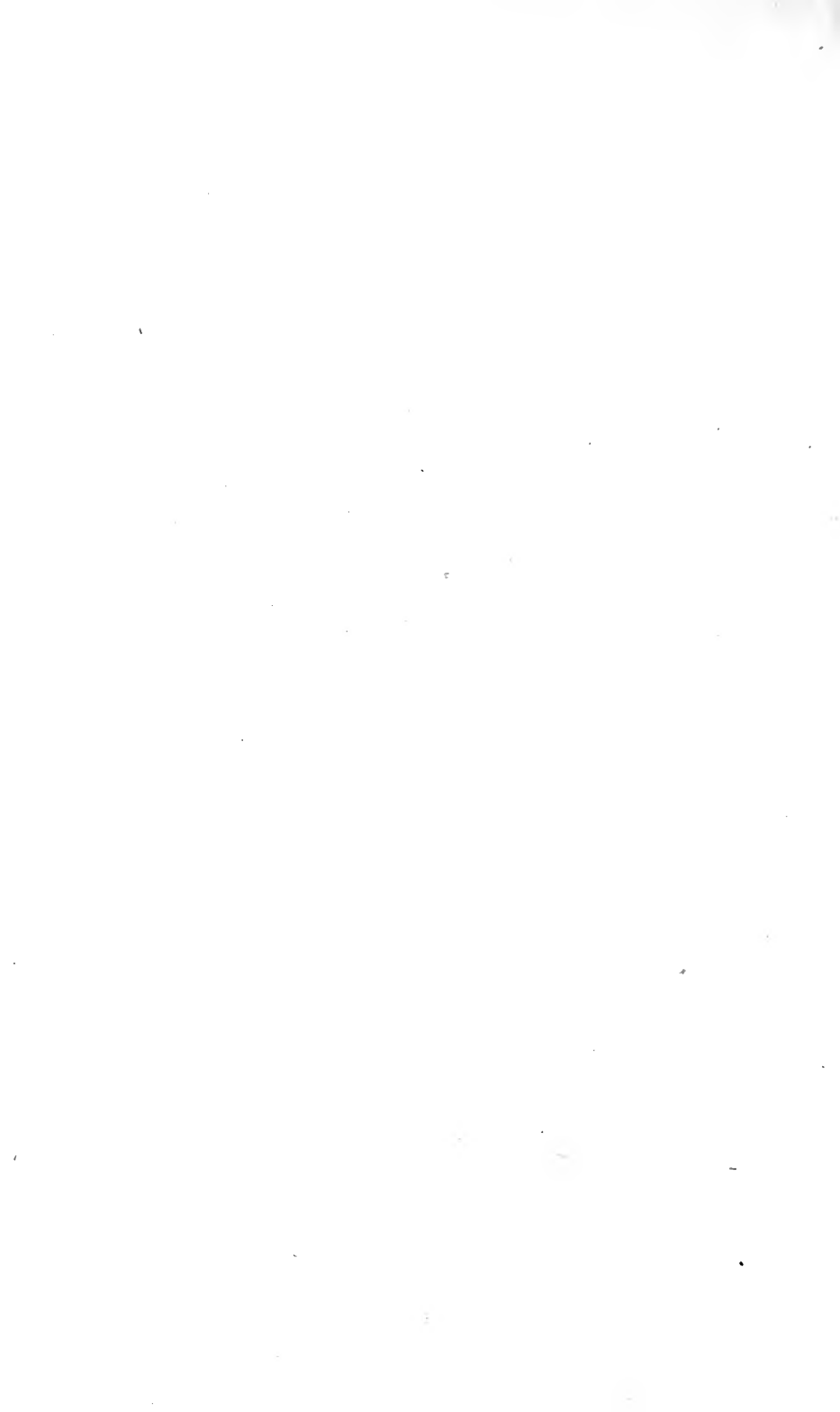


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Section references, followed by the date 1916, relate to the Finance Act, 1916.

Section references, followed by the date 1917, relate to the Finance Act, 1917.

Section references, followed by the date 1918, relate to the Finance Act, 1918.

Section references, followed by the date 1919, relate to the Finance Act, 1919.

SYNOPSIS OF CHAPTER 1.

The Excess Profits Duty.

§ 1.—THE PRINCIPLE OF THE DUTY.

2.—TRADES AND BUSINESSES LIABLE TO EXCESS PROFITS DUTY.

3.—THE ACCOUNTING PERIOD.

4.—ACCOUNTING PERIODS ENDING AFTER 31ST DECEMBER, 1916.

5.—METHOD OF CALCULATING EXCESS PROFITS DUTY.

6.—ADJUSTMENT OF DUTY IN SUBSEQUENT ACCOUNTING PERIODS.

7.—NOTICES AND RETURNS TO BE MADE BY PERSONS LIABLE.

8.—DUTIES OF LIQUIDATORS WITH REFERENCE TO EXCESS PROFITS DUTY.

9.—ASSESSMENT OF EXCESS PROFITS DUTY.

10.—APPEALS.

11.—MODIFICATIONS OF THE FOURTH SCHEDULE IN SPECIAL CASES.

12.—STOCK-IN-TRADE.

13.—EXCESS MINERAL RIGHTS DUTY.

CHAPTER I.

THE EXCESS PROFITS DUTY.

§ 1.—The Principle of the Duty.

The Principle of the Excess Profits Duty is entirely new from a taxing point of view, and is based on the contention that those trades and businesses liable to the Duty, which have increased Profits in any Accounting Period ending subsequent to the commencement of the War, are in a special position to contribute to the Revenue a considerable proportion of such Excess Profits.

The Principal Act under which the Duty is assessable is the Finance (No. 2) Act, 1915, of which Part III. deals with the subject of Excess Profits Duty, and contains §§ 38—45 inclusive. These Sections are supplemented by the Fourth Schedule of the Act, which is divided into three parts, the first containing Rules for the Computation of Profits, the second, Rules for the Computation of the Pre-War Standard, and the third, Rules with regard to the Computation of Capital.

The Duty is continued by Part III. of the Finance Act, 1916, containing §§ 45—57 inclusive; by Part III. of the Finance Act, 1917, containing §§ 20—28 inclusive; by Part III. of the Finance Act, 1918, containing §§ 34 and 35; and by Part IV of the Finance Act, 1919, containing §§ 32—36 inclusive.

The Duty is not confined to Profits arising directly out of the War, but relates to Excess Profits of all trades and businesses, with certain exceptions.

For the purpose of arriving at the Excess Profits, the actual Profits of the Accounting Period, computed as the Act directs, must be compared with the Pre-War Standard of Profits, computed as the Act directs. If the Profits of the Accounting Period so arrived at exceed the Pre-War Standard of Profits by more than £200, Duty will be payable in respect of all Accounting Periods under the 1915 Act at the rate of 50 per cent. of the Excess, under the 1916 Act at 60 per cent., under the 1917 and 1918 Acts at 80 per cent., and under the 1919 Act at 40 per cent.

In each case the sum of £200 is allowed in the first instance. If the Accounting Period is less than a year the Allowance of £200 is proportionately reduced.

Where the Pre-War Standard of Profits is small the allowance is increased under certain circumstances in respect of Accounting Periods ending after 31st December, 1916. These cases will be dealt with in § 4.

§ 2.—Trades and Businesses liable to Excess Profits Duty.

The Duty applies to all trades and businesses carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, with certain exceptions (§ 39).

Business even of an intermittent character will therefore come under the Act, and income therefrom cannot be treated as casual profits.

It should be noted that businesses owned or carried on abroad by persons ordinarily resident in the United Kingdom, are liable to the Duty. A business carried on abroad but owned by persons resident here will there-

fore be liable, but a foreign business, one or more of the partners in which are resident here, will not be liable if it can be shewn that the legal control is not exercised from the United Kingdom. A Company resident abroad, the whole or the greater part of the Share Capital of which is held by persons resident in this country, who in fact exercise control here, will be liable to the Duty, but the control of majority shareholders resident here simply *qua* shareholders will not of itself make the foreign company liable. In general, considerations which determine the liability of the foreign business to British Income Tax on the whole of its profits, will also determine its liability to Excess Profits Duty.

The first exception is Husbandry in the United Kingdom, and this has been made owing to the desirability of encouraging Agriculture for National reasons, and also, no doubt, owing to the difficulty of arriving at the Excess Profits made by Farmers, since so few keep accounts. This seems inevitable although Farmers as a class are benefiting considerably by the rise in prices.

The exemption of profits from Husbandry was raised in the case of *Inland Revenue v. W. Ransom & Son, Ltd.* (34 T.L.R. 533), where manufacturing chemists and growers of herbs occupied a farm of thirty to forty acres for the purpose of growing medicinal herbs for treatment in their business. Although no separate accounts of the profits from growing herbs were kept, there was sufficient material available to enable the Commissioners to separate the business of Husbandry from the general business. The Court held that there was evidence that the Company was engaged in Husbandry and that there was nothing in law to

prevent the separation. Exemption of the profits from Husbandry was accordingly allowed.

The second exception is in respect of Offices and Employments, which will include all persons holding positions of a personal character, such as Government Servants, Military and Naval Officers, &c.

The third exception covers Professions, the profits of which are dependent mainly on personal qualifications, and in which no Capital or comparatively small Capital is required.

On the Report stage of the Finance (No. 2) Bill, 1915, the Government moved an Amendment to insert words exempting the Profession of a Barrister, Solicitor, Doctor, Architect, Accountant, and any Profession, unconnected with the purchase or sale of property or commodities of any description.

In the course of the debate an attempt was made to reopen the whole question as to the exemption of Professions, with the result that the Government withdrew the Amendment, but the proposed Amendment was valuable as giving some indication of the Professions that are excluded from the operation of the Act.

It was stated, in answer to those critics who contended that professional persons making excess profits ought to be liable for the Duty, that the Government was satisfied that although there might be certain individual cases where Duty would be payable, the total amount obtainable would be so small as not to make it worth while to include the whole class.

The question has been raised further on the passing of subsequent Acts, but the Government have adhered to the principle of exclusion. Several cases have been decided dealing with the exemption of Professions.

In *Inland Revenue v. North & Ingram* (34 T.L.R. 535), a proprietor of a Preparatory Boarding School for boys claimed exemption on the ground that he was engaged in a Profession. There were fifty-two boys and five masters on the staff and it was proved that definite personal qualifications were required of boarding-school masters. The capital involved was considerable, as the premises were owned by the proprietor, but it was shewn that this was not essential, and the section only refers to Capital actually required, which would have been very much smaller if the premises had been rented. Exemption was accordingly allowed.

In the case of *Inland Revenue v. Maxse* (1919, 88 L.J. 752), Mr. Maxse was proprietor, publisher and editor of the *National Review*, and contended that he was exempt on the ground that he was exercising the profession of a Journalist. The Court held that as the proprietor and publisher himself edits the magazine and contributes a large percentage of the printed matter contained in it, he is, in so doing, exercising the profession of a journalist and by § 39 (c) of the Act is exempt from the Duty. Where, therefore, a claim for Excess Profits Duty is made upon the profits of the business under § 40, there may be deducted from the profits such a sum as will fairly represent the services of the proprietor and publisher as editor, and the value of the articles he has contributed.

The case of *Christopher Barber & Sons v. Inland Revenue* decided that the business of Stockbrokers and Stock Exchange was not a profession, and the cases of *William Esplen, Son & Swainston, Ltd. v. Inland Revenue* and *Esplen, Swainston and Wilson, Ltd. v. Inland Revenue* that a company, carrying on the business of naval architects, could not claim exemption

as a profession, although a naval architect was admittedly a professional man.

The concluding words of the section expressly include persons taking commissions, and agents, with the exception of commercial travellers, or agents whose remuneration is wholly fixed and does not depend on the amount of business done or other contingency.

This provision was specially framed to include all that numerous class of individuals who appear to have made large commissions out of Army and other contracts.

In the case of *Burt & Co. v. Inland Revenue* (1919, 88 L.J. 721), the firm acted as secretaries, or secretaries and agents, and commercial advisers to certain companies at fixed remunerations, together with commissions on the sale of the produce of the companies, which was sold by the firm through brokers for the companies. The Court of Appeal held that the firm was assessable to Excess Profits Duty in respect of all the moneys so earned.

§ 3.—The Accounting Period.

Under the principal Act Accounting Periods subject to Excess Profits Duty at the rate of 50 per cent. of the Excess, are any Periods ending after 4th August, 1914, and before 1st July, 1915 (§ 38 (1)).

By the 1916 Act the principal Act applies, unless Parliament otherwise determines, to any Accounting Period ending on or after the First day of July, 1915, and before the First day of August, 1917, the rate of Duty being 60 per cent. of the excess as respects any Accounting Period beginning after the expiration of

a year from the commencement of the first Accounting Period (§ 45, 1916).

By the 1917 Act the principal Act applies, unless Parliament otherwise determines, to any Accounting Period ending on or after the First day of August, 1917, and before the First day of August, 1918, the rate of Duty being 80 per cent. of the excess as respects any Accounting Period beginning on or after the First day of January, 1917 (§ 20, 1917).

By the 1918 Act the principal Act applies, unless Parliament otherwise determines, to any Accounting Period ending on or after the first day of August, 1918, and before the first day of August, 1919, the rate of Duty continuing to be 80 per cent. of the excess (§ 34, 1918).

By the 1919 Act the principal Act applies, unless Parliament otherwise determines, to any Accounting Period ending on or after the First day of August, 1919, and before the Fifth day of August, 1920, the rate of Duty being reduced to 40 per cent. as from 1st January, 1919 (§ 32, 1919).

In the case of all Businesses the rate of 80 per cent. is from the First day of January, 1917, and the rate of 40 per cent. is from the First day of January, 1919, irrespective of whether an Accounting Period begins on that day or not. It will be seen that the method of adjusting the alteration to 80 per cent. and 40 per cent. differs from that adopted when the rate was altered to 60 per cent. On the first occasion every business was allowed one year at 50 per cent., but every business will not be subject to 60 per cent. for similar periods owing to the varying dates at which Accounting Periods commence. Some may have more and others less, but every business is brought to the 80 per cent. rate as at

1st January, 1917, and to the 40 per cent. rate as at 1st January, 1919.

Where part of an Accounting Period is after and part before the date of the expiration of a year from the commencement of the first Accounting Period, the total Excess Profits and any deficiencies or losses arising in the Accounting Period must be apportioned in respect of time accordingly, the rates attributable to the time after and the time before being respectively 60 per cent. and 50 per cent. of the Excess (§ 45, 1916).

Where part of an Accounting Period is after and part before the First day of January, 1917, similar apportionment must be made, the rates attributable being 80 per cent. and 60 per cent. (§ 20, 1917).

Where part of an Accounting Period is after and part before the First day of January, 1919, similar apportionment must be made, the rates attributable being 40 per cent. and 80 per cent. (§ 32, 1919).

The Accounting Period shall be taken to be the Period for which the Accounts of the trade or business have been made up. Where the Accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without Accounts being made up, the Accounting Period shall be taken to be such Period, not being less than six months or more than a year, ending on such a date as the Commissioners of Inland Revenue may determine (§ 38 (2)).

Considerable doubt having existed as to whether Interim Accounts formed Accounting Periods, the Finance Act, 1916, provided that any Period for which the books have been actually made up for any Interim or other purpose in such a manner that the Profits can

be readily ascertained is (without prejudice to the powers of the Commissioners) to be taken as an Accounting Period, notwithstanding that under the Articles of Association of the Company carrying on the trade or business, the Accounts are also required to be made up to some other period, and notwithstanding that such Accounts are not issued (§ 51, 1916).

In determining an Accounting Period in the case of a trading business the question whether Interim Accounts are to be taken as a basis will no doubt depend upon whether Stock was taken and Accounts prepared. If this is the case then even if such Accounts are Interim Accounts they must be taken.

Where a Company closes its Accounts at the 31st December each year but takes Interim Accounts to 30th June in each year the last Pre-War year would be the year ending 30th June, 1914, and the first Accounting Period would be the half-year ending 31st December, 1914.

§ 4.—Accounting Periods ending after 31st December, 1916.

Owing to the heavy burden involved in consequence of the rate being increased to 80 per cent., important concessions were made by § 26 of the Finance Act, 1917, in respect of all Accounting Periods ending after 31st December, 1916.

It should be noted that these provisions apply for the whole Accounting Period although the same may commence at a date prior to the 1st January, 1917, and may therefore be in part subject to the 60 per cent. rate.

Although these provisions will be referred to in detail in the appropriate Sections of this book, which

they affect, it may be desirable to summarize them briefly here. They are as follows :—

- (1) In ascertaining the allowance for Increased Capital, or the Pre-War Standard of Profits in cases where there has not been one Pre-War Trade Year, the Statutory Percentage is increased from 6 per cent. to 9 per cent., but this will not apply to decreases of Capital. A further additional 1 per cent. increase applies in the case of Firms, raising the percentage from 7 per cent. to 11 per cent.

Where the ordinary Percentage Standard is taken, the extra 3 per cent. does not apply to the original Capital either in the case of Companies or Firms, but only to the Increased Capital (if any); the extra 1 per cent. for Firms however applies to the original Capital as well as to any Increase.

- (2) Where the Pre-War Standard does not exceed £500 and the Profits of the Accounting Period after adjustments for Increases or Decreases of Capital are less than £2,000, the allowance of £200 shall be increased by one-fifth of the amount by which the Profits of the Accounting Period are less than £2,000; and the same provisions apply where the Pre-War Standard exceeds £500, but in this case the amount of the addition shall be reduced by the amount by which the Pre-War Standard exceeds £500.
- (3) In the case of any business where two or more distinct industries are carried on at separate

establishments and separate accounts kept, the Commissioners may disregard any loss sustained in any of the Pre-War Years forming the basis of the standard.

- (4) Where Losses have taken place during the last six Pre-War Trade Years with the result that the Assets have been diminished or the Liabilities of the business increased, the Capital in cases where the Percentage Standard is adopted, may be computed as if there had been no such loss of Assets or increase of Liabilities.
- (5) Six years are substituted for three years in connection with claims in respect of Unremunerative Capital.
- (6) An alternative method is provided which may be adopted at the option of the Industrial and Provident Societies for the purpose of computing their Excess Profits Duty.

§ 5.—Method of calculating Excess Profits Duty.

The Profits of the Accounting Period, assuming this to be a full year, must exceed the Pre-War Standard of Profits by more than £200 before any amount is payable in respect of Excess Profits Duty, and the amount then payable will be 50, 60 or 80 per cent., of the Excess, as the case may be, after deducting the £200 referred to

The following Illustration shows the method of calculating the Duty:—

Illustration.

FIRST PERIOD.

Profit for year ending 31st March, 1915..	£12,000
Less Profits Standard £5,000	
Margin 200	
	<hr/>
	5,200
Excess	<hr/>
	£6,800
	<hr/>
Duty payable 50 per cent.	£3,400

SECOND PERIOD.

Profit for year ending 31st March, 1916..	£15,000
Less Profits Standard £5,000	
Margin 200	
	<hr/>
	5,200
Excess	<hr/>
	£9,800
	<hr/>
Duty payable 60 per cent.	£5,880

THIRD PERIOD.

Profit for year ending 31st March, 1917..	£18,000
Less Profits Standard £5,000	
Margin 200	
	<hr/>
	5,200
Excess	<hr/>
	£12,800

Duty payable :—

Three-fourths of £12,800 at 60 per cent.	£5,760
One-fourth of £12,800 at 80 per cent...	2,560
	<hr/>
	£8,320

FOURTH PERIOD.

Profit for year ending 31st March, 1918...	£16,000
Less Profits Standard £5,000	
Margin 200	
	<hr/>
	5,200
Excess	<hr/>
	£10,800
	<hr/>
Duty payable 80 per cent.	£8,640

Note to Illustration.

If the Accounting Period had ended on 31st December in each year, the year 1914 would have been at 50 per cent., the two years 1915 and 1916 at 60 per cent., and the two years 1917 and 1918 at 80 per cent.

Where any Accounting Period is a Period of less than a year the allowance of £200 must be proportionately reduced (§ 38 (2)), and so also must the Pre-War Standard (Fourth Schedule, Part II., Rule 2).

§ 6.—Adjustment of Duty in subsequent Accounting Periods.

Where a person proves that in any Accounting Period which ended after 4th August, 1914, his profits have not reached the point which involves liability to Excess Profits Duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as Excess Profits Duty in respect of any previous Accounting Period, or to set off against any Excess Profits Duty payable by him in respect of any succeeding Accounting Period, such an amount as will make the total amount of Excess Profits Duty paid by him during the whole period accord with his profits or losses during that period (§ 38 (3)).

In calculating any repayment or set-off under the above Section, any amount to be repaid or set-off on account of a deficiency or loss arising in any Period in respect of which Duty would be payable at the rate of 50 per cent. of the Excess shall be calculated by reference to that rate of Duty (§ 45 (2), 1916). This Section did not provide for the deficiency to be calculated at the rate of 60 per cent. in respect of periods to which that rate is applicable, but this is the method that has been adopted.

Similarly any amount to be repaid or set-off on account of any Deficiency or Loss arising in any Period commencing on or after the First day of January, 1917, or in respect of any apportionment from that date to

31st December, 1918, shall be calculated by reference to Duty at the rate of 80 per cent. (§ 20 (2), 1917).

Any amount to be repaid or set-off on account of any Deficiency or Loss arising in any Period, commencing on or after the First day of January, 1919, or in respect of any apportionment from that date shall be calculated by reference to Duty at the rate of 40 per cent. (§ 32 (2), 1919).

It is important to note that this provision applies not only where a Loss is sustained but where the Profits in any Period show a Deficiency as compared with the Pre-War Standard.

The Deficiency therefore arising in any Accounting Period must be calculated at the same rate as the Duty payable in respect of that Period, *e.g.* where the Deficiency is in the first Accounting Period at the 50 per cent. rate, and the Excess is in the second Period at the 60 per cent. rate, the adjustment of the Deficiency must be made on the 50 per cent. basis.

The following Illustration shows the material effect of this provision in cases to which it applies :—

Illustration.

Profits Standard	£2,000
First Period Profit	1,000
Second Period Profit	4,000
Third Period Profit	2,200
Fourth Period Profit	1,600

FIRST PERIOD 50 PER CENT. RATE.

Profits Standard	£2,000
Margin	200
	<hr/>
Less Profit	1,000
	<hr/>
Deficiency	£1,200
	<hr/>
50 per cent. thereof	£600
	<hr/>

SECOND PERIOD 60 PER CENT. RATE.

Profit	£4,000
Less Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
	<hr/>
Excess	£1,800
	<hr/> <hr/>
Duty Payable 60 per cent.	£1,080
Less 50 per cent. of Deficiency, First Period	600
	<hr/>
Net Duty Payable	£480
	<hr/> <hr/>

THIRD PERIOD 60 PER CENT. RATE.

Profit	£2,200
Less Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
	<hr/>
	Nil.
	<hr/> <hr/>

No Duty Payable and no Set-off.

FOURTH PERIOD 80 PER CENT. RATE.

Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
Less Profit.. .. .	1,600
	<hr/>
Deficiency.. .. .	£600
	<hr/> <hr/>
80 per cent. thereof	£480
	<hr/> <hr/>

In this case therefore the £480 paid in respect of the Second Period will be recoverable in full and no duty will be payable over the whole of the four Periods taken together.

If the Profits of the First and Second Periods be reversed, while the Fourth Period remains the same, the position would be as follows :—

	Duty.	Set-off.
First Period Excess, £1,800.		
Duty Payable 50 per cent. thereof	£900	
Second Period Deficiency, £1,200.		
Set-off 60 per cent.		£720
Fourth Period Deficiency, £600.		
Set-off 80 per cent.		480
	<u>£900</u>	<u>1,200</u>
<i>Less Duty Payable</i>		900
Net Set-off to carry forward to Fourth Period		<u>£300</u>

If the Second and Fourth Periods are reversed and the First Period remains the same, the position would be:—

	Duty.	Set-off.
First Period Deficiency, £1,200.		
Set-off 50 per cent.		£600
Second Period Deficiency, £600.		
Set-off 60 per cent		360
Fourth Period Excess, £1,800.		
Duty Payable 80 per cent. ..	£1,440	
	<u>1,440</u>	<u>£960</u>
<i>Less Set-off</i>	960	
Net Duty Payable ..	<u>£480</u>	

Although therefore the total Profits of the Four Periods taken together remain in each case the same, the ultimate results are very different.

Although it would appear to be the intention of § 38 (3) that where no Excess Profits are made over the whole Period no Duty should be payable, owing to the increase in the rates to 60 and 80 per cent. it may happen in some cases that although no Excess may exist over the whole period there may be liability in respect of one or more Periods.

Illustration.

Profits Standard	£2,000
First Period Profit	1,200
Second Period Profit	3,100
Third Period Profit.. .. .	2,200
Fourth Period Profit	2,300

FIRST PERIOD 50 PER CENT. RATE.

Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
<i>Less</i> Profit.. .. .	1,200
	<hr/>
Deficiency	£1,000
	<hr/>
50 per cent. thereof	£500
	<hr/>

SECOND PERIOD 60 PER CENT. RATE.

Profit	£3,100
<i>Less</i> Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
Excess	£900
	<hr/>
Duty payable 60 per cent. thereof ..	£540
<i>Less</i> 50 per cent. Deficiency, First Period	500
	<hr/>
Net Duty Payable	£40
	<hr/>

THIRD PERIOD 60 PER CENT. RATE.

Profit	£2,200
<i>Less</i> Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
	<hr/>
	Nil.
	<hr/>

No Duty Payable and no Set-off.

FOURTH PERIOD 80 PER CENT. RATE.

Profit	£2,300
<i>Less</i> Profits Standard	£2,000
Margin	200
	<hr/>
	2,200
Excess	£100
	<hr/>
Duty Payable, 80 per cent. thereof..	£80
	<hr/>

The total Profits of the Four Periods are £8,800 which are exactly equivalent to four years Standard plus four years allowance of £200, so that over the whole Period there is no Excess. Owing to the increased rates, however, a *primâ facie* liability exists of £120, but having regard to the doubt as to the interpretation of § 38 (3) in such cases the Commissioners are allowing the payment of any Assessments of this nature to be held over for subsequent adjustment when the liability can be finally ascertained. This arrangement was announced by Mr. Bonar Law in the House of Commons in answer to a question put on 4th June, 1918, by Sir Harmood Banner.

Where part of an Accounting Period is after and part before the expiration of one year from the commencement of the First Accounting Period, the apportionment and adjustment of Deficiency involved under § 45 (2), 1916, may be illustrated as follows:—

Illustration.

Pre-War Standard (Year)	£20,000
Profit 6 months to 1st February, 1915 ..	15,000
„ 7 „ 1st September, 1915 ..	8,000

ACCOUNTING PERIOD TO 1ST FEBRUARY, 1915.

Profit	£15,000
Less Profits Standard ..	£10,000
Margin	100
	<hr/>
	10,100
Excess	£4,900
	<hr/>
Duty Payable 50 per cent. ..	£2,450
	<hr/>

ACCOUNTING PERIOD TO 1ST SEPTEMBER, 1915.

Profit	£8,000
Less Profits Standard ..	£11,666
Margin	116
	<hr/>
	11,782
Deficiency	£3,782
	<hr/>
$50\% \times \frac{2}{7} \times £3,782 =$	£1,621
$60\% \times \frac{1}{7} \times £3,782 =$	324
	<hr/>
Duty Recoverable ..	£1,945
	<hr/>

Where part of an Accounting Period is after and part before the First day of January, 1917, the apportionment and adjustment of Deficiency involved under § 20 (2), 1917, can be illustrated as follows :—

Illustration.

Profits Standard	£20,000
Profit year to 30th April, 1917	17,200

ACCOUNTING PERIOD TO 30TH APRIL, 1917.

Profits Standard	£20,000
Margin	200

	<hr/>	20,200
<i>Less Profit</i>		17,200

Deficiency ..	<hr/>	£3,000
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$60\% \times \frac{8}{12} \times £3,000 =$	£1,200
$80\% \times \frac{4}{12} \times £3,000 =$	800

Total Set-off ..	<hr/>	£2,000
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§ 7.—Notices and Returns to be made by Persons Liable.

It was the duty of every person chargeable to Excess Profits Duty under the Principal Act to give notice to that effect to the Commissioners of Inland Revenue before 31st January, 1916 (§ 44 (2)). If he has not previously given notice in respect of any Accounting Period he must give notice to the Commissioners before the expiration of two months after the termination of any Accounting Period in respect of which he is chargeable, or if the Accounting Period terminated before the passing of the Finance Act, 1917, within one month after 2nd August, 1917, the date of the passing of that Act (§ 45 (3), 1916; § 20 (3), 1917).

In place of being sent to the Commissioners of

Inland Revenue, Notice may be sent to the Local Inspector of Taxes.

The term "Person" includes Company, Corporate Body, and Firm, as well as Individuals.

The Commissioners may require any person engaged in any trade or business to which the Excess Profits Duty applies, or who was so engaged during any Accounting Period, or Pre-War Trade Year, to furnish them within two months after the requirement is made with Returns of the Profits of the business during the Accounting Period, or Pre-War Trade Years, and such other particulars in connection with the trade or business as the Commissioners may require (§ 44 (1)).

It will be observed that the Commissioners may require a Return whether or not the person called upon is liable for Excess Profits Duty, so long as the trade or business concerned is subject to the Duty.

The Penalty for failing to furnish a proper Return or to comply with any requirement of the Commissioners, or to give Notice of liability to pay Duty, is that the person concerned shall be liable on summary conviction to a Fine not exceeding £100, and to a further Fine not exceeding £10 a day for every day during which the offence continues after conviction therefor (§ 44 (2); § 45 (3), 1916; § 20 (3), 1917).

The Return required by the Commissioners must contain the following particulars:—

- (1) Full Style or Designation of the Trade or Business.
- (2) Names and Addresses of the Partners in the case of a Firm.
- (3) Nature of the Trade or Business.

- (4) Where carried on.
- (5) The commencing and ending dates of the Accounting Period or Periods.
- (6) The amount of Profits arising from the Trade or Business in each of the above Accounting Periods, computed as the Act directs.
- (7) The amount of Profits arising from the Trade or Business in each of the three last Pre-War Trade Years, computed as the Act directs.

The following particulars are also required to be transmitted with the Return :—

- (a) Copies of any original Trading Accounts and Profit and Loss Accounts for each of the Accounting Periods, and for each of the three last Pre-War Trade Years, and also of any original Balance Sheets, as at the end of each of the said periods of years, and as at the commencement of the first of the said Pre-War Trade Years.

NOTE.—In so far as copies complying with the above requirement have already been furnished for the purpose of Income Tax, it should be so stated and duplicate copies need not be transmitted.

Moreover, if the Profits of each Accounting Period, as computed by the person making the Return, fall below the point involving liability to Duty, copies of the Accounts need not, in the first instance, be supplied, and in that event a subsequent intimation will be made as to any particulars required beyond those declared on the Return ; while, if it is desired to show that in the case of a trade or business in respect of which the Return is made the Percentage Standard exceeds the Profits Standard, a further communication will be sent by the Inland Revenue, specifying the particulars required in relation to the Pre-War Standard, and no copies of Accounts need be furnished with the Return of Profits other than those relating to the Accounting Periods.

- (b) Full particulars, if not already notified, as to the nature of any fictitious or artificial transaction or operation entered into or carried out during any of the Accounting Periods, or Pre-War Trade Years, to which the Return relates.

Detailed statements should be attached to the Return of Profits, showing

- (1) How the amounts returned in respect of the Accounting Periods are computed from the Accounts submitted,
- (2) How the amounts of the Profits returned in respect of the three last Pre-War Trade Years are computed from the Accounts submitted,
- (3) How the amount of Excess Profits Duty payable by the Taxpayer in respect of the Accounting Period or Periods concerned is computed.

The Return must also include a Statement of all Allowances and Reliefs claimed.

Only such Adjustments as the Act directs can be made in computing the Profits of the Pre-War or the Accounting Periods, and no deductions should be made in the first instance in respect of any Allowances and Reliefs claimed which are subject to the decision of the Commissioners or the Board of Referees.

The Taxpayer, however, in preparing his computation of the amount of Excess Profits Duty payable may, in the Statement thereof, make such adjustments as will give effect to the Allowances and Reliefs claimed.

§ 8.—Duties of Liquidators with reference to Excess Profits Duty. •

It shall be the duty of the Liquidator of every Company which is being wound up at the time of the

commencement of the Principal Act (*i.e.* 23rd December, 1915), or is wound up after the commencement of the Act, and is chargeable to Excess Profits Duty, to give notice of the fact to the Commissioners of Inland Revenue (§ 44 (2)).

Where a Company is wound up after the commencement of the Act and before the 1st July, 1916, and the Company would be chargeable with Excess Profits Duty if the provisions of the Act were continued and extended to Accounting Periods ending before the 1st July, 1916, it shall be the duty of the Liquidator of the Company to give notice to the Commissioners, and to set aside such sum out of the assets as appears to the Commissioners to be sufficient to provide for any such Excess Profits Duty as may become chargeable (§ 45 (4)).

The first provision, as continued in subsequent Acts, applies to Companies in Liquidation at 23rd December, 1915, or going into Liquidation thereafter, which are liable to Duty, *i.e.* where such Companies have Excess Profits in respect of any Accounting Period.

The second provision applies to Companies going into Liquidation after 23rd December, 1915, and before 1st July, 1916, where such Companies have Excess Profits in respect of any Accounting Period ending after 30th June, 1915, and before 1st July, 1916, which would not be liable to Duty under this Act otherwise.

There will probably be cases however of Companies going into Liquidation before 23rd December, 1915, and having Excess Profits in respect of an Accounting Period ending after 30th June, 1915. Although the wording of the Act does not appear to provide for these, the Liquidators should nevertheless give notice as they are obviously meant to be included.

Further Duties are imposed on Liquidators in connection with Excess Profits Duty arising on sale of Stock in Trade after the commencement of the Liquidation, under § 35 of the Finance Act, 1918, which are referred to in § 12 of this Chapter.

In the case of any trade or business which by reason of its being unable to pay its Debenture-holders or Creditors, is being carried on by a Liquidator, Receiver or Trustee under the Court, no Excess Profits Duty shall be levied or paid until provision has been made for payment of such unpaid Debenture-holders or Creditors (§ 56, 1916).

§ 9.—Assessment of Excess Profits Duty.

The Duty shall be assessed by the Commissioners of Inland Revenue and shall be payable at any time not less than two months after it is assessed; but the Commissioners may, where they think fit, allow the Duty to be paid in instalments of such amounts payable at such times as they may direct (§ 45 (1)).

The Commissioners of Inland Revenue are neither the General, the Additional, nor the Special Commissioners, but are the Commissioners appointed under § 1 of the Inland Revenue Regulation Act, 1890.

Under that Act they are appointed by the Crown to be Commissioners for the collection and management of Inland Revenue, and any two or more of their number constitute the Board of Inland Revenue. In effect therefore these Assessments will be made by the Board of Inland Revenue at Somerset House.

The provision enabling the Duty to be paid in instalments is very important, particularly where the additional profits are locked up in stock or other assets.

Where the whole or a large portion of the additional profits has been utilized in capital extensions the payment of the duty may be a matter of very considerable difficulty, but special arrangements can be made in such cases to avoid the business being financially crippled by the payment of the Duty within too short a period. Monthly instalments are usually required in such cases.

Sums may be deposited with the Commissioners on account of any Excess Profits Duty that may become payable and Interest will be allowed up to the date when Duty becomes payable at such rate as may be determined by the Treasury (§ 54, 1916). The rate at present allowed is 5 per cent. per annum. No Excess Profits Duty is payable in respect of such Interest.

The Duty may be assessed on any person carrying on the trade or business, or acting as agent therefor. In the event of the trade or business having ceased, the person to be assessed is the person who owned the same, or acted as agent in carrying on the same, immediately before the time at which the business ceased.

Where there has been a change of ownership, the Commissioners of Inland Revenue may, if they think fit, take the Accounting Period as the period ending on the date on which the ownership has so changed, and assess the duty on the person who owned the business or acted as agent therefor at that date (§ 45 (2)).

The Commissioners of Inland Revenue have power to make Regulations in respect of the Assessment and Collection of Excess Profits Duty and the hearing of Appeals under § 45, and may apply and adopt any enactments relating to the Assessment and Collection of Income Tax, or the hearing of Appeals as to Income Tax by the General or Special Commissioners,

which do not otherwise apply (§ 45 (7)). Certain Regulations have been made which are printed in the Appendix.

All Commissioners and other persons employed for any purpose in connection with the Assessment or Collection of Excess Profits Duty shall be subject to the same obligations as to secrecy as are necessary in the case of Income Tax (§ 45 (8)).

§ 10.—Appeals.

The appointment of a Board of Referees by the Treasury for the purpose of deciding special points and hearing certain Appeals is quite a new departure on the part of the Legislature, in so far as the majority of the members appointed are not Government Officials, but well-known business men, chosen for their special knowledge of certain trades, and including among their number several Professional Accountants.

Except in cases where a special right of Appeal lies to the Board of Referees under §§ 40 and 42, an Appeal may be made from any assessment to the General Commissioners of the division in which the taxpayer is assessed, or to the Special Commissioners, and those Commissioners shall have power, if they think fit, to summon witnesses and examine them on oath (§ 45 (5)).

Section 149 of the Income Tax Act, 1918, will apply to Appeals from the General or Special Commissioners or the Board of Referees, as the case may be, to the Courts (§ 45 (5)). Under that section in the event of the Appellant or the Surveyor being dissatisfied with the determination as being erroneous in point of law, he may within twenty-one days require

the Commissioners to state and send a case to the High Court thereon.

Appeal from the High Court lies to the Court of Appeal and the House of Lords, but the Appeal from the Commissioners or the Board of Referees can only be made on a point of law, and not on a question of fact. On a question of fact their decision is final.

A special right of Appeal to the Board of Referees is afforded in connection with Modifications of the Fourth Schedule in Special Cases and is referred to below in § 11. Reference may also be made to the Board of Referees in connection with questions as to increases of Percentages, or Alteration of the Percentage Standard, in certain cases. These are dealt with in Chapter III., § 7.

Sections 195 and 196 of the Income Tax Act, 1918, relating to the Re-hearing of Appeals in Ireland, apply to Excess Profits Duty Appeals in that country.

§ 11.—Modifications of the Fourth Schedule in Special Cases.

Where it appears to the Commissioners of Inland Revenue, on the application of a Taxpayer in any particular case, that any provisions of the Fourth Schedule should be modified in his case, owing to special circumstances, the Commissioners will have power to allow such modifications as they think necessary (§ 40 (3)).

Applications of this nature can only be made under certain conditions, as follows:—

- (1) Owing to a change in the constitution of a Partnership.

- (2) Owing to the postponement or suspension, as a consequence of the present War, of renewals or repairs.
- (3) Owing to exceptional depreciation or obsolescence of Assets employed in a trade or business, due to the present War.
- (4) Owing to the necessity, in connection with the present War, of providing Plant which will not be wanted for the purposes of the trade or business after the termination of the War.
- (5) Owing to any other special circumstances specified in Regulations made by the Treasury.

No application can be made under this Section unless it comes within the cases specified in the Act or in the Regulations made by the Treasury. The only Regulation at present made relates to depreciation of Patents and is referred to in Chapter IV., § 3 (e).

If the Commissioners refuse to allow any modification, or the applicant is dissatisfied with any modification allowed, the applicant may require the Commissioners to refer the case to the Board of Referees.

In the case of Partnership changes, application should be made under this Section where additional Partners have been taken in during, or shortly prior to, the Accounting Period, and some part of the Excess Profits are properly attributable to their inclusion in the firm; or where a former Manager or Clerk has been admitted to partnership and his remuneration becomes an appropriation of Profits in place of the salary formerly charged. In the first case if the new partners were formerly partners in a similar business liable to

Excess Profits Duty, it should be claimed that their proportions of the Pre-War Standard of that business should be added to the Pre-War Standard of the new Firm, while if they were in employments, it should be claimed that their Pre-War employment Standard should be added. In the second case, the former remuneration of the new partner should be added to the Profits in each of the Standard Years.

In the case of the postponement or suspension of renewals and repairs in consequence of the War, application should be made to include a reserve in respect of the same as a charge against the profits of the year, although the repairs or renewals have not been executed. In order to ascertain the proper amount to charge comparative statements should be prepared of the renewals and repairs executed in the Pre-War and Accounting Periods respectively, proper allowance being made for the rising cost of carrying out the work.

In the case of exceptional depreciation or obsolescence of assets due to the present War, application should be made to enable an additional sum to be charged under this heading. Where Plant has been continuously worked night and day, or for longer hours than usual, or with less efficient staff, extra depreciation should be claimed according to the special circumstances of each case.

Where Plant has been provided which will not be required after the termination of the War, application should be made to write the same off over two, three or four successive Accounting Periods, allowance being made for any estimated residual value. Such arrangements are usually of a provisional nature and will be subject to final adjustment after the conclusion of the War, when the facts can be ascertained.

Forms required for applications of this nature, giving particulars of the information which must be afforded, will be found in the Appendix.

A Memorandum has been issued by the Board of Inland Revenue in connection with these Allowances from which the following extracts are taken :—

3. These allowances extend to any material assets employed in a business and not merely to machinery and plant. Where these assets have been constructed or acquired during the war at an inflated price and will sink to a lower level of value, or even to scrap value, at the end of the war, full relief can be claimed. The measure of the allowance to be made in respect to such assets will be the difference between cost and post-war value. An allowance of the like nature is, of course, applicable also to assets in use before the war, the value of which has fallen owing to war causes. The measure of the allowances in such cases is the difference between the value of the assets (depreciated or written down for wear and tear) at the date when liability to Excess Profits Duty began and their post-war value.
4. Inasmuch as post-war value and the duration of the war are unknown, the Board of Inland Revenue have been unable in most cases to make final allowances of the foregoing character, but where the necessary evidence is furnished that depreciation is taking place or is inevitable at the end of the war, they are ready to make provisional allowances subject to subsequent correction.
5. As a general rule these allowances, whether provisional or final, will be "spread," *i.e.*, granted by instalments in successive accounting periods during the lifetime of the duty: but in exceptional cases where new assets are being regularly acquired during successive accounting periods, and the taxpayer desires that the allowance (whether provisional or final) for each asset or group of assets should be wholly or mainly granted in the accounting period in which the asset is acquired, the Board will not object to that course being taken.
11. Reference may also be made to the following points on which questions sometimes arise :—
 - (a) Where pre-war machinery or plant has become obsolete from causes not actually relating to the war but arising during the war, and is then replaced, an allowance for the difference between the written-

down value and the scrap value is admissible, and where the replacement is not effected during the war, but shortly after, a like allowance may be claimed (under Section 40 (3) of the Finance (No. 2) Act, 1915).

- (b) Special depreciation of pre-war buildings due to the war may be allowed for under the same sub-section. Normal depreciation taking place equally in the past and in the present, if allowed, would not, in most cases, affect the liability to Excess Profits Duty.
- (c) It will happen from time to time that a manufacturer will purchase machines, &c., for the purpose of specific contracts, and will wish, from motives of prudence, to write down the value of the machines to a low figure out of the profits of the contracts. In cases in which purchases of this character have regularly occurred, both in the past and in the present, the non-allowance of a special depreciation beyond the ordinary wear and tear allowance would not normally affect the liability to Excess Profits Duty. Where, on the other hand, purchases of this kind take place only during war periods, they would usually be attributable to war conditions, in which event a special allowance can be claimed (under Section 40 (3) of the Finance (No. 2) Act, 1915).

§ 12.—**Stock-in-Trade.**

Considerable anxiety has been shown by Traders in connection with the greatly increased value of Stock-in-Trade which has been subject to considerable rises throughout the period of the War. The principle usually adopted has been to bring the stocks into account at cost or market value, whichever is lower, but the effect of this would be that a considerable loss might be sustained if the Excess Profits Duty terminated before the Stocks held at the close of the last Accounting Period had been realized.

Under these circumstances attempts were made to get a special clause passed in the Finance Act, 1917, to deal with the matter, but the Government refused to adopt this course. They were, however, prepared to

meet the case, and issued in the form of a White Paper the following proposals :—

1. A period will be allowed after the termination of the war in which to ascertain by actual realisation the value of the stock appearing in the account at the end of the last Accounting Period, and an allowance made from the profits of that period for any difference between the valuation and the sum realised. The period proposed is a fixed period of two years from the termination of the war, for all businesses.

The loss (if any) on only such stocks as were in hand at the end of the last Accounting Period will be brought into the adjustment, but the whole of such stocks, not individual parcels selected by the taxpayer, must be considered.

The necessary sanction for this modification of general principles will be given by a Regulation under section 40 (3) of the Finance (No. 2) Act, 1915.

2. Certain classes of industry require to keep stocks of raw or semi-manufactured goods for the purposes of manufacturing processes, and these goods are frequently of such an imperishable character that a minimum quantity required for a business could be held untouched for a long period.

Accordingly in any class of trade—

- (a) which requires for its manufacturing processes to keep such stocks, *and*
- (b) in which a recognised practice has obtained of taking a constant quantity at a constant price, the Government are prepared to accept the practice. The Government would regard goods as imperishable which are of sufficient durability to last without material deterioration during a period equal to the length of the war.

Any individual member of the class who has not adopted the method in his business may be allowed to do so for the purposes of Excess Profits Duty, but may not claim as the constant quantity of stock so valued, a greater quantity than the minimum amount held at any stocktaking in the three pre-war trade years.

Where a claim is made that an industry should be brought within this concession, the Board of Inland Revenue will be prepared to receive representations and to consider evidence as to the existence of a material body of such practice in the industry and as to the character of the stocks to which it is claimed the method

should be applied, with a view to securing the uniform treatment of all members of the industry.

The balance of stock above the minimum quantity in cases falling under this modification of the general principle is to be treated as in (1).

3. Profits derived from sales which reduce stock below the particular minimum or constant quantity adopted for any business are not the less trading profits. Where, however, a raw material is associated with plant in a manufacturing process (*e.g.*, metal kept to a constant level in galvanising baths), the Board of Inland Revenue will consider a claim under section 40 (3) of the Finance (No. 2) Act, 1915, that it is akin to a capital asset, like plant, which has been exceptionally depreciated (by depletion) or of which the renewal has been postponed.
4. Where in an industry or as respects a class of stock to which the foregoing (2) does not apply, the owner of a business has taken a quantity of stock at a base price, the stock will fall to be valued during the periods of liability at cost or market value, whichever is the lower, but from the final valuation (on that basis) there will be allowed a deduction of a sum (in pounds sterling) equal to the original difference (at the end of the standard period) between the valuation on the base method and a valuation on the cost or market value method. Alternatively the first stock valuation may be revised and put upon the general basis of cost or market value when the modification outlined in (1) will apply.

Profits arising from the sale, at any time after the 22nd April, 1918, otherwise than in the ordinary course of trade, of the trading stock or part thereof belonging or formerly belonging to any trade or business, shall be deemed to be profits arising from the trade or business, and as such liable to Excess Profits Duty (§ 35, 1918).

Where any such sale takes place after a trade or business has ceased, the trade or business shall be deemed to have been carried on up to and including the date on which the sale takes place, and the Accounting Period shall be taken to be such as the Commissioners may determine.

The Duty shall be assessed on and recoverable from the person by whom or by whose authority any trading stock is sold, whether as Owner, Agent, Liquidator, Trustee or Receiver, or other person acting in a similar capacity, but no liability shall be imposed on the purchaser of the trading stock.

The appointment of any such Liquidator, Trustee or Receiver or other person shall not be treated as a change of ownership of the trade or business, and set-off under § 38 (3) of the Finance (No. 2) Act, 1915, and any adjustment under Clause 7 of Part I. of the Fourth Schedule of that Act shall have effect as if the profits arising from the sale of such stock had been made by the owner of the business immediately before the appointment of the Liquidator, Trustee, Receiver or other person, and as if the Duty were payable by him.

Where trading stock is sold with other assets of the trade or business, the part of the consideration applicable to the trading stock shall be determined by the Commissioners, subject to appeal to the General or Special Commissioners.

For the purpose of this section any trading stock which has been disposed of otherwise than by way of sale shall be deemed to have been sold, and any such stock so disposed of and any stock sold for a consideration other than cash, not being a consideration the value of which can be easily ascertained, shall be deemed to have realized the market price of the day on which it was so disposed of or sold.

No person shall at any time after the 14th May, 1918, dispose otherwise than by way of sale of any trading stock unless he has previously made provision to the satisfaction of the Commissioners for securing the payment of any Excess Profits Duty which may be

chargeable under this section, and if any person attempts to dispose of any stock in contravention of this provision, the disposal shall be void and of no effect.

The expression "trading stock" includes—

- (a) Any goods such as are sold in the ordinary course of the trade or business whether in a finished condition or not;
- (b) Any raw or other materials used in the manufacture or preparation of any such goods.

References to disposal of trading stock do not include disposal by way of Testamentary disposition.

The object of this provision is to prevent the evasion of Excess Profits Duty on the enhanced values of trading stocks by selling the same in liquidation and treating the profit thereon as Capital profit.

§ 13.—Excess Mineral Rights Duty.

Provision is made for the payment of Excess Mineral Rights Duty where the Rent of the Rights varies according to the price of the Minerals. The amount payable in respect of the first working year ending on any date after the commencement of the present War, is 50% of the amount by which the Rent payable in the Accounting Year exceeds the Pre-War Standard of Rent, without reference to any Mineral Rights Duty otherwise payable or paid, either directly or by deduction (§ 43).

No allowance of £200 is made in this case.

The Section proceeds to fix the method of ascertaining the Pre-War Standard of Rent and to make other provisions relating to the Assessment of the Duty.

The rate is increased to 60 per cent. of the Excess in the case of Minerals which have been subject to a Mining Lease after 4th August, 1914, for all Accounting Years, and in the case of other Minerals for any Accounting Year ending after completion of the first Accounting Year, and any additional Duty may be recovered accordingly (§ 46, 1916).

The rate is further increased to 80 per cent. of the excess as from 1st January, 1917, subject to certain qualifications set out in the Section (§ 21, 1917), and reduced to 40 per cent. of the excess as from 1st January, 1919 (§ 33, 1919).

In the case of the *Commissioners of Inland Revenue and the Duke of Northumberland* (34 T.L.R. 554), it was held that the amount on which the Excess Mineral Rights Duty charge was to be fixed must be arrived at after deduction of Income Tax in the different years, according to the respective rates of tax then in operation, whether payable or paid, upholding the decision of the Referee.

SYNOPSIS OF CHAPTER II.

The Computation of Profits.

§ 1.—BASIS OF COMPUTATION.

2.—DEDUCTIONS ALLOWED AND NOT ALLOWED.

- (a) Deductions allowed for Income Tax Purposes.
- (b) Deductions not allowed for Income Tax Purposes.
- (c) Wear and Tear.
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3.—INCOME TAX.

4.—REMUNERATION OF DIRECTORS AND MANAGERS.

5.—ARTIFICIAL TRANSACTIONS.

6.—ASSESSMENT OF COMPANIES OWNING THE SHARE CAPITAL OF OTHER COMPANIES.

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8.—INVESTMENTS.

9.—PROFITS OF LOCAL AUTHORITIES.

10.—PROFITS OF INDUSTRIAL AND PROVIDENT SOCIETIES.

11.—CONTRACTS IN COURSE OF COMPLETION.

12.—SHIPPING CONCERNS.

- (a) Sale of Ships.
- (b) Limitation of Set-off or Repayment in respect of Deficiencies or Losses.
- (c) Special Allowance for Depreciation of Ships built during the War.
- (d) Deferred Repairs, Surveys, Deferred Liabilities under Charters, &c.
- (e) Adjustments in connection with Ships sunk or lost.

CHAPTER II.

THE COMPUTATION OF PROFITS.

§ 1.—Basis of Computation.

The profits arising from any trade or business subject to the Duty shall be separately determined for that purpose, but on the same principles as the profits and gains of such business are or would be determined for the purpose of Income Tax, subject to the modifications set out in the first part of the Fourth Schedule, and to any other provisions of the Act (§ 40 (1)).

It will be observed that the calculation is to be made on the same principles, but not necessarily in respect of the same periods as the calculation for Income Tax purposes.

Profits are the adjusted profits for the period. The computation of profits on the average of previous years as applied for the purpose of Income Tax will not operate.

§ 2.—Deductions Allowed and Not Allowed.

Deductions will be allowed for interest on money borrowed for the purpose of the business, or for Rent, Royalties or other payments, Income Tax on which is collected at the source, not being payments of Dividends, or distribution of profits.

On the other hand, Taxed Income from Rent, &c., forming part of the Assets of the business, although taxed, must be included (Fourth Schedule, Part I., Rules 1—2).

The only reason why these items are written back in the case of Income Tax is that they are taxed at the source; but for the purpose of arriving at Excess Profits Duty, they are expenses of the business which can be charged, or profits which must be included. In both cases the amounts to be charged against or included in the Profits should be the gross amounts before deduction of Income Tax.

Interest will include interest on Debentures, since Debentures are not regarded under the Act as Capital.

Interest on Partners' Capital, however, will not be allowed as this is not in respect of borrowed money, and is, in effect, part of the profits.

The following is an Official List of the Deductions allowed, and Deductions not allowed, for Income Tax purposes :—

(a) Deductions Allowed for Income Tax Purposes.

- (1) Repairs of Premises occupied for the purpose of the trade, &c., and for the supply or repair of Implements, Utensils or Articles employed, not exceeding the sum usually expended for such purposes according to the average of the three years preceding.
- (2) Debts proved to be bad, also Doubtful Debts according to their estimated value.
- (3) The Rent of Premises used solely for purposes of business and not as a place of residence.
- (4) A proportion not exceeding two-thirds of the Rent of any Dwelling House, partly used for the purposes of business.

- (5) *The Annual Value of any Premises occupied by the owner solely for the purposes of business, and not as a place of residence, according to the amount on which duty has been paid under Schedule A.*
- (6) *A proportion not exceeding two-thirds of the Annual Value (according to the amount on which duty has been paid under Schedule A) of any Dwelling House occupied by the owner, and partly used for the purposes of trade.*
- (7) Any other Disbursements or Expenses wholly and exclusively laid out for the purpose of the trade, &c.

NOTE.—Those items printed in Italics are not allowed for Excess Profits Duty purposes.

(b) Deductions not Allowed for Income Tax Purposes.

- (1) Interest on Capital.
- (2) *Any Annual Interest, Annuity or any other Annual payment payable out of the Profits or Gains, or for any Royalty, or other sum paid in respect of the user of a patent.*
- (3) Sums paid as Salaries to Partners, or for Drawings by Partners.
- (4) Sums invested or employed as Capital in the trade or business, or on account of Capital withdrawn therefrom.
- (5) Sums expended in improvements of premises or written off for Depreciation of Land, Buildings or Leases.
- (6) Loss not connected with or arising out of the trade, &c.
- (7) Expenses of Maintenance of the persons assessable, their families, or private establishments.

- (8) Income Tax on Profits or Gains, or on the Annual Value of the trade premises.
- (9) Premiums for Life Insurance, or *Wear and Tear of Machinery and Plant*.
- (10) Loss recoverable under an Insurance or Contract of Indemnity.

NOTE.—Those items printed in *Italics* are allowed as Deductions for Excess Profits Duty purposes.

(c) Wear and Tear.

Only such deductions for Wear and Tear or such expenditure of a Capital nature for renewals, or for the development of the Business, shall be allowed as would be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners to be reasonably and properly attributable to the year or Accounting Period (Fourth Schedule, Part I., Rule 3); except in so far as special modifications may be claimed under § 40 (3) (*See* Chapter I., § 11).

The Allowance for Wear and Tear made on any Income Tax Assessment is calculated upon the Income Tax value of the plant at the date of the Balance Sheet at the end of the last year brought into average, and represents the Allowance in respect of the fiscal year following, *e.g.* if a Company takes its Accounts at 31st December each year the Assessment for 1915-16 would be based upon the average of the three years ending 31st December, 1914, and the Wear and Tear Allowance would be calculated on the Income Tax value of the Plant as at 31st December, 1914. This Allowance would be in respect of the year 1915-16.

Consequently the Wear and Tear to be allowed for Excess Profits Duty purposes in computing the Profits for the year 1915 would be the same amount.

Where the allowance for wear and tear for Income Tax has been incorrectly calculated in the past, or no allowance has been made, the charge for Excess Profits Duty purposes is not confined to what has in fact been allowed for Income Tax purposes, but should be based on what ought to have been allowed had the claim been properly computed.

Illustration.

Income Tax Value of Plant at 31st December, 1912	£30,000
Less Wear and Tear allowed 1913-14, 5 per cent.	1,500
	<hr/>
	28,500
Add Additions to 31st December, 1913 ..	4,000
	<hr/>
Income Tax Value at 31st December, 1913 ..	32,500
Less Wear and Tear allowed 1914-15, 5 per cent.	1,625
	<hr/>
	30,875
Add Additions to 31st December, 1914 ..	3,125
	<hr/>
Income Tax Value at 31st December, 1914 ..	34,000
Less Wear and Tear allowed 1915-16, 5 per cent.	1,700
	<hr/>
	<u>£32,300</u>

The Wear and Tear to be allowed against the respective Accounting Periods will be 5 per cent. on the values at the commencement of such periods, as follows :—

Year ending 31st December, 1914—

5 per cent. on £32,500 value at 31st December, 1913, £1,625.

Year ending 31st December, 1915—

5 per cent. on £34,000 value at 31st December, 1914, £1,700.

(d) Foreign and Colonial Excess Profits Duty.

No deduction may be made for Excess Profits Duty except for any sum which has been paid in respect of the Profits on account of any Excess Profits Duty or similar Duty imposed in any country outside the United Kingdom (Fourth Schedule, Part I., Rule 4).

Certain Relief in respect of Colonial Excess Profits Duty is granted by § 23 of the Finance Act, 1917, as extended by § 34, Finance Act, 1919, under which if Excess Profits Duty is chargeable in respect of any Profits, both in a British Possession or Protectorate, and in the U.K., and arrangements have been made with the Government of such Possession or Protectorate whereby only the Duty which is higher is to be payable, the amount being apportioned between the respective Exchequers, the Commissioners may in lieu of any Relief granted under the Fourth Schedule, as above mentioned, allow or make such remission or adjustments of Duty as may be necessary, but these shall not be less favourable than the Relief that would have been allowed under the Fourth Schedule. This relief will only apply where the necessary conditions have been declared to exist by Order in Council. No such Order in Council has yet been issued.

§ 3.—Income Tax.

An adjustment of the Excess Profits Duty payable may be made in respect of Income Tax under certain circumstances referred to below.

The amount of Excess Profits Duty paid shall be allowed as a deduction for the purpose of Income Tax in computing Profits and gains of the year which included the end of the Accounting Period in respect of which the Excess Profits Duty has been paid; but

where any person has received repayment of any amount previously paid by him by way of Excess Profits Duty, the amount repaid shall be treated as Profit for the year in which repayment is received (§ 35 (1)).

Where in any Income Tax year the Profits from which a deduction may be made for Excess Profits Duty come into account, but owing to the time at which the amount of Excess Profits Duty became ascertained it was impracticable to give effect to the deduction in assessing Income Tax, the amount by which the Income Tax would have been reduced can be deducted from the amount payable for Excess Profits Duty, or, if there is no Excess Profits Duty, will be repaid to the Taxpayer (§ 35 (2)).

The effect of this provision is to prevent Income Tax being paid on that portion of the profits of any period which have been paid, or will be payable, as Excess Profits Duty.

Owing to the date of passing the principal Act it was impossible in most cases to make any adjustment for Excess Profits Duty payable in arriving at the Income Tax for 1915-16, and consequently the adjustment was made on the Excess Profits Duty payable in respect of any Accounting Period brought into that year of Assessment.

Similar considerations apply to subsequent Income Tax Assessments in so far as the Excess Profits Duty payable in respect of any Accounting Period brought into the average has not been deducted in arriving at the Assessment for Income Tax.

It should be remembered that owing to the operation of the three years average the Income Tax Assessment in any case will as a rule only be affected by one-third of the amount chargeable for Excess Profits Duty in respect of any one period.

Illustration.

The following are the Adjusted Profits of a Company :—

Year ending 31st December, 1911	..	£35,000
" 1912	..	40,000
" 1913	..	36,000
" 1914	..	66,000

PROFITS STANDARD.

1912	..	Profit	£40,000
1913	..	"	36,000
						<u>2)76,000</u>

Profits Standard .. £38,000

Profits, 1914	£66,000
Less Profits Standard				£38,000	
Margin		200	
					<u>38,200</u>

Excess £27,800

Duty Payable 50 per cent. thereof .. £13,900

The Company's Assessment for Income Tax for the year 1915-16 will have been based on the average of the three years ending 31st December, 1914, and at 1st January, 1916, when the Tax became payable, it would have been impossible to give effect to § 35 (1) and bring into account the Excess Profits Duty payable for the year 1914. The amount by which the Income Tax Assessment would have been reduced, could this have been done, should consequently be deducted from the Excess Profits Duty payable.

The fact that the basis on which the Assessment for Income Tax is made differs from the basis upon which the Assessment for Excess Profits Duty is arrived at is immaterial, except that, as the Income Tax Assessment is based on the average profits for three years, only an amount equal to Tax on one-third of the Excess Profits Duty can be deducted.

Assuming the Company's adjusted figures for Income Tax, after writing back Debenture Interest each year, were as follows, before charging any amount in the year 1914 in respect of Excess Profits Duty :—

Year ending 31st December, 1912	..	£45,000
" 1913	..	42,000
" 1914	..	72,000
		<u>3)159,000</u>
		<u>£53,000</u>

The Assessment for 1915-16 would be £53,000, ignoring any question of Claim for Wear and Tear.

Had the Excess Profits Duty payable in respect of 1914 been charged in the Accounts of that year, the Assessment would have been as follows :—

1912	•	£45,000
1913		42,000
1914	£72,000	
Less Excess Profits Duty				13,900	
					<hr/> 58,100
					3)145,100
Assessment 1915-16	..				<hr/> £48,366 13 4

The Tax payable for 1915-16 at 3s. in either case would have been as follows :—

Before bringing into Account Excess Profits Duty	
Payable : 3s. in the £ on £53,000 £7,950
After bringing into Account Excess Profits Duty	
Payable : 3s. in the £ on £48,366 13s. 4d. 7,255
	<hr/>
Income Tax overpaid £695

This amount can therefore be deducted from the Excess Profits Duty payable of £13,900. Tax at 3s. on one-third of £13,900 is £695. Consequently the method of showing the Adjustment will be as follows :—

Excess Profits Duty Payable £13,900
Less Income Tax at 3s. on one-third thereof	695
	<hr/>
Net Amount Payable £13,205

Any Excess Profits Duty payable under § 35 of the Finance Act, 1918, in respect of profits arising from the sale of trading stock, otherwise than in the ordinary course of trade, shall not be allowed as a charge for Income Tax purposes (§ 31, 1918).

§ 4.—Remuneration of Directors and Managers.

Any deduction allowed for the remuneration of Directors, Managers, and persons concerned in the

management of the trade or business shall not exceed the sums allowed for those purposes in the last Pre-War trade year, or a proportionate part thereof as the case requires, unless the Commissioners of Inland Revenue direct otherwise, owing to any special circumstances, or to the fact that the remuneration of any Managers or Managing Directors depends on the profits (Fourth Schedule, Part I., Rule 5).

The question as to what persons come within this Rule, is a matter of some difficulty to determine. The case of Directors or Managing Directors is clear enough, and of Managers who have powers of control over the business, but there are numerous individuals, who are often called Managers, who receive a remuneration partly or wholly by way of a percentage of the profits of the business, or of a part thereof, and these persons are not in all cases in a position of control.

Where the remuneration of any Manager or any Managing Director depends on the Profits or takes the form of a percentage, the Commissioners have power to allow a similar percentage to be charged as was payable in the last Pre-War Year, but they limit the amount allowable in the case of each individual to £2,000 in excess of the amount received by him in the last Pre-War Year.

In the case of *Rex v. Inland Revenue Commissioners, ex parte William France Fenwick & Co., Ltd.* (1917 142 L.T. 58), the Commissioners had only allowed the amount of £2,000 to each Director in excess of the amount received in the last Pre-War Year and refused to allow any further remuneration notwithstanding the fact that the two Managing Directors were entitled to a percentage of the profits which worked out in excess

of this amount. It was held that although the remuneration depended on the Profits, it was within the discretion of the Commissioners to determine the amount they would allow in addition to the amount received for the last Pre-War Year. This ruling has been upheld by the Court of Appeal (34 T.L.R. 118).

It does not follow that even where a Pre-War contract exists giving the director a percentage of the profits, the Commissioners will allow an additional amount up to £2,000, or even any sum in excess of that received in the last Pre-War Year. In *Williamson Film Printing Co., Ltd., v. Inland Revenue* (34 T.L.R. 545), a private Company was formed for the purpose of acquiring a business carried on by Mr. Williamson and the former proprietor was employed as Managing Director for five years at a salary of £300 per annum, plus a commission of 5 per cent. of the net profits after payment of the dividend on the Preference Shares. In the Pre-War Year to 31st March, 1914, the salary and commission amounted to £398, and on 1st October, 1914, the salary was increased to £500 and the commission to 10 per cent. The total remuneration for the year to 31st March, 1915, amounted to £1,230, but the Commissioners refused to allow more than the amount charged in the last Pre-War Year, viz.: £398. The Company contended that there was a right of appeal to the General or Special Commissioners under § 45 of the 1915 Act, but the Court decided that the discretion vested in the Commissioners by Rule 5 of Part I. of the Fourth Schedule was absolute and final and precluded any appeal. In this case, the person concerned was the former proprietor of the business, and also the controlling shareholder, which no doubt influenced the Board in refusing to allow him any additional remuneration.

Had this not been the case, any increase in the amount of commission at the original rate, apart from salary, up to the limit of £2,000, would probably have been passed.

Where the remuneration does not depend on the Profits it is the practice to allow additional remuneration to Directors and Managers if good reasons are shown, and the amount is reasonable, but this is not allowed in the case of Directors who by themselves or with their relatives have a Controlling interest in the Company.

Where additional remuneration has been disallowed in the first instance and it is desired to put a claim before the Commissioners, a written statement should be submitted to the Surveyor concerned, fully setting out the facts, and he should be asked to submit the case to the Board of Inland Revenue. Particulars of the shareholdings in the Company, both in the Pre-War and Accounting Periods should be given. Copies of any contracts with directors, or any resolutions affecting their remuneration, should also be submitted.

It should be noted that no appeal lies from the decision of the Commissioners and it is therefore important that the case should be properly stated and due stress laid upon all the relevant considerations.

If, as respects any Accounting Period ending on or after the 1st July, 1915, the Commissioners of Inland Revenue refuse to allow deduction in respect of any increase in remuneration of Directors, Managers or other persons concerned in the management, and the taxpayer is required to pay Excess Profits Duty in respect of disallowed deductions, the taxpayer shall be entitled to recover from such Director or other person the amount paid by way of Excess Profits Duty in

respect of the increase; but any amount so recovered shall, unless the Commissioners otherwise direct, be treated as Excess Profits Duty paid by the Director or other person from whom it is recovered, and not as Excess Profits Duty paid by the taxpayer (§ 49 (2), 1916).

It was held in the case of *Thompson Bros. & Co. v. Amis* (1917, Time 25th Apr.) that where Excess Profits Duty had been paid in consequence of remuneration disallowed, this could be recovered from the employee under § 49 (2) of the Finance Act, 1916, and that this Sub-section is not confined to cases under Sub-section 1 of the same Section (which only applies where the Percentage Standard is adopted and the Directors have a Controlling interest), but relates back to Clause 5 of Part I. of the Fourth Schedule, Finance (No. 2) Act, 1915.

In *Collette v. Lockie, Pemberton & Co.* (145 L.T. 234) the Revenue had refused to allow remuneration paid to a person described as "Assistant Manager" of certain Cuban business conducted by the firm in respect of which he was paid a salary and commission of 15 per cent. on the profits. The firm thereupon called upon the "Assistant Manager" to repay to them duty on the disallowed sum. The latter applied for a declaration that he was not a "manager or person concerned in the management of the trade or business" within § 49 (2) of the Finance Act, 1916, but it was found as a fact that this was the case and he was therefore liable to repay the duty.

The question as to whether Excess Profits Duty or any Reserve therefor can be charged before arriving at the percentage payable to the Directors and other persons concerned in the management is a very

important one and has been the subject of various decisions which are summarized below :—

Williams, Hollins & Co., Ltd. v. Paget (1917, 1 Ch. 87).

Held that where a Manager under an agreement is entitled to receive a commission on the amount by which the profits of the Company were more than sufficient to pay certain dividends, the Excess Profits Duty payable must not be deducted before ascertaining the amount of the commission.

Thomas v. Hamlyn & Co., Ltd. (1917, 37 T.L.R. 130).

Held that where the Manager of certain Branches of a Business was entitled to a percentage of the net profits of those Branches, the Company could not deduct therefrom the proportion of the Excess Profits Duty which might be attributable to those Branches.

Fellows, Ltd. v. Cocker (1917, 62 S.J. 54).

Held that where a Managing Director is entitled to a Commission on the net profits of a business, Excess Profits Duty ought not to be deducted before the Commission is ascertained.

Collins v. Sedgwick (1917, 1 Ch. 179).

Held that where the selling price of the Company's Shares is fixed by the Articles on the basis of the amount of the entire profits available for distribution as dividend, the amount payable as Excess Profits Duty must be deducted before arriving at the amount available for distribution as dividend.

Re Condran; Condran v. Stark (1917, 61 S.J. 445).

Held that under an agreement by which a Business was to be purchased for a fixed sum plus one-third part of the net profits for a period of years, the net profits in such a case meant the profits divisible among the

persons interested and that therefore Excess Profits Duty must be deducted in arriving at the amount to be paid.

Patent Castings Syndicate, Ltd. v. Etherington (1919, 88 L.J. 398).

Where by an agreement made in 1916, it was provided that the manager should be paid a commission by a percentage upon the net profits of the year of the business of the Company. Held that the Excess Profits Duty payable by the Company for the year ought to be deducted from the profits of the year before calculating the amount of the Commission.

The essential point to be determined in each of these cases was whether the net profits should be arrived at before or after deduction of Excess Profits Duty.

In the first three cases the Court held that the net profits must be arrived at before the Excess Profits Duty is charged. In the last three cases the Court held that the amount is after Excess Profits Duty is charged.

In *Hollins v. Paget* and *Thomas v. Hamlyn*, the Judges took the view that Excess Profits Duty was similar to Income Tax, being a certain proportion of the profits appropriated by the State, and that the Commission payable to any individual based on profits was payable out of the same fund as Income Tax and Excess Profits Duty, and must therefore be calculated before any provision is made for these items.

The view was also taken that the right of recovery under § 49 (2) of the Finance Act, 1916, pointed to the fact that Commission must be calculated in the first instance on the total profits.

In *Condran v. Stark* the Court dissented from the view in *Hollins v. Paget* that Excess Profits Duty was

analogous to Income Tax as an appropriation of profits, pointing out that it was an amount chargeable on the business and could not be recovered by individual shareholders in the same way as Income Tax could.

It would appear therefore that as between Owners or Shareholders or persons entitled to the ultimate distribution of Profits, Excess Profits Duty must be deducted before arriving at divisible profits, but that persons concerned in the management who have a right to Commission before Owners or Shareholders receive their share of profits are entitled to have that Commission calculated before charging Excess Profits Duty, especially in view of the right of recovery from the individual in respect of amounts disallowed afforded by § 49 (2) of the Finance Act, 1916.

Where the Pre-War Standard of Profits is taken to be the Percentage Standard or is calculated by a reference to the Statutory Percentage in the case of a Company whose Directors have the controlling interest, the Commissioners may, if they think fit, as respects any Accounting Period, including a past Accounting Period, for the purpose of the provisions relating to the Statutory Percentage, and for the purpose of the determination and computation of profits, treat the Company as if it were a Firm, and the Directors, or any of them, as if they were Partners in the Firm (§ 49 (1), 1916).

Where this course is adopted, all remuneration to Directors is disallowed as if they were Partners, though in certain cases that payable to working Directors, who do not possess a controlling interest, is allowed, or some part thereof. In the case of a new business, the Pre-War earnings of all or any of the Directors will often be allowed as an addition to the percentage standard of

the Company, but if this is done, no remuneration will of course be allowed in the Accounting Periods, as far as such Directors are concerned.

It will be observed that this provision only applies where the Percentage Standard is taken, and not where a Profits Standard is adopted.

§ 5.—Artificial Transactions.

It is illegal for any person, for the purpose of avoiding the payment of Excess Profits Duty, to enter into or carry out any fictitious or artificial transaction or operation, and if any such transaction has been entered into before the commencement of the Act he must inform the Commissioners of the nature thereof.

The penalty for not complying with this provision is liability on summary conviction to a fine not exceeding £100 (§ 44 (3)).

If any such transaction has taken place no deduction shall be allowed in respect thereof where it appears, or to the extent to which it appears, that the operation thereof has artificially reduced the amount to be taken as the Profits (Fourth Schedule, Part I., Rule 5).

This is to prevent Schemes for Evasion of the Duty that might otherwise be legal.

§ 6.—Assessment of Companies owning the Share Capital of other Companies.

Where any Company, either in its own name or in that of a Nominee, owns the whole of the Ordinary Capital of any other Company carrying on the same trade or business, or so much thereof as a single shareholder can legally own, the second Company shall be

regarded as a Branch of the first Company, and the profits of the two Companies shall not be separately assessed (Fourth Schedule, Part I., Rule 6).

Where this course is adopted, the method employed is to compute the Capital and Profits of the Owning Company, excluding the value of the shares held in the Company owned, and the dividends thereon. The Capital and Profits of the Company owned will be computed in the usual way and added to the adjusted Capital and Profits of the Owning Company. This method will be employed both for Pre-War and Accounting Periods.

In the case of *Dunlop Rubber Co., Ltd. v. Inland Revenue*, the Company acquired the whole of the share capital of five companies with a view to ensuring the supply of raw rubber necessary to carry on its business. The Court decided that the five companies carrying on the business of growing rubber in the Far East were not carrying on the same business as the Dunlop Rubber Co., Ltd. (a company manufacturing rubber goods from raw material), and could not therefore be treated as a branch for Excess Profits Duty purposes.

§ 7.—Adjustment of Loss in Pre-War Years.

Where the Percentage Standard is adopted, and the net result of the trade or business during the three last Pre-War Trade Years has shown a Loss and any part of the Profits has been applied in extinction of that Loss, a deduction shall be allowed equal to the amount of Profits so applied (Fourth Schedule, Part I., Rule 7).

This provision also applies to cases where the Capital Account of the trade or business shows a debit balance (§ 50, 1916) and in such cases, there being no figure of Capital upon which to base the Percentage Standard, and a Percentage Standard consequently not being adopted, the relief afforded under the original wording of the Rule could not be applied. Relief also applies under such circumstances if a Profits Standard is adopted.

Illustration.

A Firm's adjusted figures were as follows :—

Year ending 30th April, 1912, Profit	..	£3,000
„ „ 1913, Loss	..	2,000
„ „ 1914, „	..	1,500
„ „ 1915, Profit	..	5,000

The Capital of the Firm for the purpose of the Act at 30th April, 1914, was £12,000.

PROFITS STANDARD.

1912 Profit	£3,000
Less 1914 Loss	1,500
						<u>2)1,500</u>
Profits Standard	..					<u>£750</u>

The Statutory Percentage on the Firm's Capital at 7 per cent. amounts to £840, and this amount will therefore be substituted for £750 as the Pre-War Standard.

The Excess Profits Duty payable will be as follows :—

Profit, 1915	£5,000
Less Net Loss for three years ending 30th April, 1914	500
						<u>4,500</u>
Less Percentage Standard	840
Excess Profits	3,660
Less Allowance	200
						<u>2)3,460</u>
Duty Payable 50 per cent.	..					<u>£1,730</u>

Had the Firm's Capital been only £5,000, the Percentage Standard could still have been adopted, since the taxpayer is not obliged to select the best of his three Pre-War Years unless it suits his purposes, and where, as in this case, there is a loss to be recovered it might pay him to select the average of the years 1913 and 1914, which would give a Pre-War Loss of £1,750 and enable him to substitute the Percentage Standard of 7 per cent. on £5,000=£350.

Where, however, the Loss that can be deducted is only small it may not be advisable to take advantage of the Percentage Standard, where this itself is considerably less than the Pre-War Standard of the average of the two best years.

Illustration.

Assuming the same figures as in the previous Illustration, except that the Loss for the year ending 30th April, 1914, was £1,100 in place of £1,500, and that the Firm's Capital was £5,000.

PROFITS STANDARD.					
1912 Profit	£3,000				
Less 1914 Loss	1,100				
				2)	1,900
Profits Standard	£950				

The Excess Profits Duty payable, assuming the Percentage Standard is not adopted, will, therefore, be as follows :—

Profit, 1915	£5,000				
Less Profits Standard	950				
Excess Profits	4,050				
Less Allowance	200				
				2)	3,850
Duty Payable 50 per cent. ..	£1,925				

It will be seen that as the Percentage Standard was not adopted, the net loss of the three Pre-War Trade Years, amounting to £100, cannot be deducted; but if the Firm elected to take their two years of Loss 1913 and 1914 for the purpose of arriving

at the Profits Standard they could have substituted the Percentage Standard of £350, with the following result :—

Profit, 1915	£5,000
Less Net Loss for three years ending 30th April, 1914	100
	<hr/> 4,900
Less Percentage Standard, 7 per cent. on £5,000	350
	<hr/> 4,550
Less Allowance	200
	<hr/> 2)4,350
Duty Payable 50 per cent. ..	<hr/> £2,175

In the second case additional Duty would be payable of £250, notwithstanding that the £100 Loss was first deducted.

Where, therefore, the Pre-War figures are such that the taxpayer is able to choose between taking a Profits Standard or a Percentage Standard, it will only be advantageous to him to take the latter, if it is lower than the Profits Standard, when it enables him to deduct the net Loss of the last three Pre-War Trade Years, and the amount of such Loss is sufficient to make it worth while to do so. It must be remembered that once the Percentage Standard has been adopted, it will no doubt also apply to subsequent years, and though in some cases it might pay to apply it to the first year, it might prove very expensive afterwards.

Where the Percentage Standard is higher than the most favourable Profits Standard, it should in all ordinary cases be adopted. The effect of adjustments for Increased or Decreased Capital should, however, always be taken into consideration—see Chapter IV.

§ 8.—Investments.

No account is to be taken of income received from Investments except in the case of Life Assurance Businesses, and businesses where the principal business consists of the making of Investments.

Where account is taken of any such income any variation in the value of any of those Investments, which appears to the Commissioners not to be due to a variation in profits, should also be taken into account; and where the income has been derived from profits in respect of which any payment or repayment of Excess Profits Duty has been made, such deduction or addition shall be made in computing the profits as will make proper allowance therefor (Fourth Schedule, Part I., Rule 8).

The only Companies specifically mentioned are Assurance Companies, but other Companies and Firms whose principal business consists in the making of investments, such as Trust Companies, must take such income into account. Many trading and other Companies and Firms hold investments, but the income from these must be omitted, unless it forms their principal business.

It is largely a question of fact whether in any particular case the making of Investments can be said to be the principal business or part of the principal business, and the application of the rule will therefore depend upon the determination of the facts by the Commissioners. Thus in the case of Bill Discounters who hold large Investments for the purpose of their financial operations, it has been admitted that transactions in Investments form an essential part of their business, and as such the Investments can be brought into account.

Where Investments are taken into account the variation in value not due to a variation in profits must be ascertained for each of the years selected as the basis of the Pre-War Standard, and also for each Accounting Period, and this should be done by valuation at the commencement and the end of each period on the basis of market values, the increase in any period being treated as profit relating to that period, and the decrease as a loss.

As Income Tax is not allowed as a deduction, the gross amount of Interest and Dividends received must be included in cases where the Investments are brought into account.

Where Investments are not brought into account and the same or part of them have been pledged as security for advances to be used in the business, the Loans should in certain cases be excluded in the same manner as the Investments themselves, in computing the Capital of the business. Although such Loans may be raised for the purpose of the business, as the Income from the Investments will not in such a case be brought into account, Interest on the Loans must also be excluded in computing the Profits.

When the 5 per cent. War Loan was issued the question arose as to whether moneys invested in this War Loan would be regarded as Investments or treated as Capital employed in the business, and similar considerations have arisen in connection with moneys placed on deposit and Treasury Bills. According to a statement made by the Secretary to the Treasury, the Board of Inland Revenue can only regard money placed on deposit in a Bank, or invested as Treasury Bills, as employed in the business if the money will be required within a limited period for the purposes of the business.

and they will be ready to consider claims that holdings of War Loan or National War Bonds should be regarded as employed in the business and to judge them by no less favourable test.

It is a difficult matter to say precisely what Capital in the nature of Cash Balances, Deposits and Investments is, in fact, necessary for carrying on a business, and each case must be treated on its own merits. This point is more fully dealt with in Chapter IV., § 6.

§ 9.—Profits of Local Authorities.

The total amount which a Local Authority must provide out of the Rates or otherwise for Sinking Fund purposes in connection with any trades or businesses carried on by them will be allowed as a deduction in calculating the total profits from such trade or business for the purpose of Excess Profits Duty (Fourth Schedule, Part I., Rule 9).

This is a special concession in the case of Local Authorities since such charges are in effect a repayment of Capital. Trading Companies providing Sinking Funds for the repayment of Debentures will not be entitled to charge the same as a deduction.

§ 10.—Profits of Industrial and Provident Societies.

In the case of Societies registered under the Industrial and Provident Societies Acts the Excess Profits Duty shall be charged on the sum by which the profit per member for the Accounting Period (including any surplus arising from transactions with members) exceeds the like profit per member in the

Pre-War Trade Year or average of years taken as the basis of computation for the purpose of the Pre-War Standard of Profits, multiplied by the number of members in the Accounting Period (Fourth Schedule, Part I., Rule 10).

The profit per member in the Pre-War Period taken as the basis of computation for the purpose of the Pre-War Standard of Profits must be multiplied by the number of members in the Accounting Period, and the resultant total will represent the Pre-War Standard, which must then be compared with the actual profits for the Accounting Period, and if Excess Profits result Duty will be payable accordingly.

The method of calculation is an ingenious one to adjust to a fair basis the profits as between one period and another, having regard to any increase or decrease of members.

An alternative method of computation is provided under § 26 (8) of the Finance Act, 1917, which may be adopted at the option of these Societies for any Accounting Period ending after 31st December, 1916, as follows :—

The amount of Excess Profits (if any) arising on commercial transactions with non-members shall be separately ascertained in accordance with the general principles of the principal Act, and there shall be added thereto the amount (if any) by which the profit or surplus arising from transactions with members per pound sterling of turnover in the Accounting Period exceeds the like profit or surplus in the Pre-War Trade Year or average of years taken as the basis of computation for the purpose of the Pre-War Standard of Profits in respect of such commercial transactions as aforesaid, multiplied by the number of pounds sterling of turnover

in the Accounting Period; and Excess Profits Duty shall be charged on the sum of those amounts.

This method of computation cannot be adopted for ascertaining the amount of any deficiency or loss nor can any Duty paid under this provision be repaid by reason of a deficiency or loss computed on the original basis.

Regulations have been made by the Commissioners for the purpose of carrying the foregoing provisions into effect, which are printed in the Appendix.

§ 11.—**Contracts in course of completion.**

Where Contracts extend beyond one or more Accounting Periods, and are only partially performed in any Accounting Period, the entire profit or loss, or estimated profit or loss, in respect of the whole Contract must be apportioned over each of the Accounting Periods in which such Contract was partially performed, in proportion to the extent to which the Contract was performed in such periods, unless the Commissioners, owing to any special circumstances, otherwise direct (Fourth Schedule, Part I., Rule 11).

The calculation of estimated profit or loss on Contracts in course of completion is always a difficult matter, but where proper Cost Accounts are kept it can be made with some degree of accuracy. If at the time the Accounts are prepared for Excess Profits Duty purposes, the final result of the Contract is known, the apportionment can be made with comparative ease, but where this is not the case care should be taken to see that all contingencies are amply provided for, in order to avoid taking more profit than is properly attributable to the Accounting Period concerned.

§ 12.—Shipping Concerns.

(a) Sale of Ships.

Where any ship has been sold since the 4th August, 1914, in such circumstances that the profits of the sale are not the profits of the trade or business, special provision shall, if the Commissioners shall require, be applied in the computation of the liability to Excess Profits Duty in respect of profits arising from the use of the ship (§ 47, 1916). The whole section—which is a lengthy one—will be found printed in full in the Appendix, but briefly it provides that the Pre-War Standard of Profits of the purchaser as respects the ship shall, when the Vendor's Standard is a Profits Standard, be calculated by reference to the profits arising from the use of the ship during the Pre-War Trade Years as if the ship were a separate business.

Where the Standard is a Percentage Standard, the Pre-War Standard shall be the same as if the ship had not been sold.

In either case the Pre-War Standard of the Vendor and the Purchaser shall respectively be reduced and increased as the case may be, with any adjustments which may be necessary to meet the case of borrowed money or unpaid purchase money, or other similar matters.

Where the Profits arising from the use of the ship cannot be separately determined, provision is made for the same to be arrived at by apportionment of the total Profits.

Where the Pre-War Standard has been determined or adjusted under this section, any increase or decrease of Capital attributable to the purchase or sale of the ship shall be disregarded.

In order to ascertain the Pre-War Profits of the ships sold, the Voyage Accounts, if kept, should be examined and it should be seen that all proper apportionments of freight, accrued insurance, &c., have been made. The general and management charges, including Directors' remuneration, will not generally be allocated over the Voyage Accounts and must therefore be apportioned to the ships concerned, either by way of division according to the number of ships employed, or by way of tonnage, or otherwise. Any Debenture Interest or other Interest on loans in part applicable to the ships sold, should also be calculated and adjusted, similar adjustment being made in connection with the Capital employed in respect of the ships. Where the Company's profits include profits arising from activities other than shipping, such as in respect of wharves, insurance, management commission for boats otherwise owned, &c., the apportionment of the management expenses to the ships sold may be difficult, and it may be more convenient to agree a round figure per ship with the Inland Revenue Authorities. Any depreciation charged in the Voyage Accounts should be written back and the proper wear and tear deductions made.

Where several boats have been sold and the Pre-War Profits of any of them are less than the Percentage Standard of the boat concerned, or alternatively, there is a loss, it is contended that where the section is applied the Pre-War Standard should only be reduced by the net balance of profit on all the ships sold. The section, however, does not specifically provide for such a contingency, and it is an open point whether it could not be applied to those ships only in respect of which the Pre-War Standard of Profits is in excess of the Percentage Standard.

It should be noted that the section must be applied to the Purchaser in the first instance, and it is not intended to benefit the Revenue, but merely to adjust the incidence of taxation as between Purchaser and Vendor. Where, therefore, the Revenue claim to apply the section to the Vendor, the latter should take care to see that it is applied to the Purchaser. Where the Purchaser is a neutral, non-resident here, and is not therefore within the operation of the Act, it is contended that the section cannot be applied to the Vendor.

(b) Limitation of Set-off or Repayment in respect of Deficiencies or Losses.

In the case of any Trade or Business which consists wholly or partly of the business of shipping, there is no right of recovery or set-off in respect of Deficiencies or Losses under § 38 (3) of the principal Act in any Accounting Period commencing on or after the 1st January, 1917, and in the case of an Accounting Period which has commenced before that date and ends after that date, in respect of any Deficiency or Loss that may be apportioned from the 1st January, 1917 (§ 22, 1917).

This Section does not apply where the Shipping Business carried on is merely ancillary to the principal Trade; and where the Trade does not consist wholly of shipping but the principal part of the business consists of shipping, apportionment of any deficiency or loss may be made so as to limit the application of this Section to such part of the business as consists of shipping.

If in any Accounting Period commencing on or after 1st January, 1917, there has been a loss, or the profits have not reached the point which would have involved

liability to Duty if the Percentage Standard had been adopted, the same amount shall as respects the Deficiency or Loss, or so much thereof as is affected by this Section, be repaid or set-off as would have been if the Percentage Standard had been adopted.

Any Appeal arising under this Section must be to the Special Commissioners.

The expression "Business of Shipping" means the business carried on by an Owner of Ships; and the expression "Owner" includes any Charterer.

(c) Special Allowance for Depreciation of Ships built during the War, and Second-hand Ships.

Allowances for special depreciation under § 40 (3) of the principal Act apply particularly to ships built under War conditions at high prices which will sink to a lower level of value at the termination of the War. The Board of Inland Revenue have issued a Memorandum dealing with these allowances which will be found in the Appendix.

Claims should be made provisionally in respect of the difference between cost price of the vessels built under War conditions and their probable value after the War, and for the purpose of provisionally estimating post-war values regard will be paid to pre-war cost of similar ships as one of the available factors which may fairly be taken into account. The final settlement, however, in all cases will be made by reference to the post-war value and not to any estimated pre-war cost which may have been provisionally taken into account.

Claims can be considered under this heading not only in respect of vessels contracted for and built during the War, but also in respect of vessels contracted for before the War in cases where additional sums have

been paid to secure completion under War conditions, and vessels contracted for during the War at war prices in cases where delivery takes place after.

The Chamber of Shipping of the United Kingdom has issued a new scale of Depreciation Allowances for Income Tax and Excess Profits Duty in connection with second-hand ships which has been drawn up in consultation with the Inland Revenue Authorities.

The principle adopted is that every owner should be allowed to deduct Depreciation on a scale which, based on the anticipated life of the ship, will give him back his Capital less break-up value.

The arrangements apply both to Income Tax and Excess Profits Duty as follows :—

1. INCOME TAX.

- (a) Depreciation shall be allowed in respect of second-hand Steamships purchased *during the War or after the War* by reference to the price actually paid, and at the rates shown by the Table printed in the Appendix.
- (b) Depreciation will continue to be allowed on the scale previously recognised, in respect of *second-hand Steamships purchased in Pre-War Years*, but the new owner shall be allowed on application to adopt the new scale as from the 6th April, 1918, *i.e.*, he shall be allowed as from that date depreciation calculated upon the cost price to him and by reference to the estimated life at the date of purchase.
- (c) These arrangements are not to interfere with the existing practice as to *new Steamships* upon which depreciation will continue to be allowed on the cost price at 4 per cent. per annum (based upon a presumed life of twenty-five years, less one year break-up value).
- (d) An additional 2 per cent. per annum on the cost price will be allowed as from the 6th April, 1917, during the remaining period of the War, in respect of all Steamships whether new or second-hand and whether purchased in Pre-War Years or during the War.
- (e) The yearly depreciation (other than the additional 2 per cent. referred to in Clause (d) above) on all second-hand Steamships purchased during the War, and still owned by the purchaser, will be re-calculated as from the date of

purchase, and the balance due, if any, allowed, subject to the necessary adjustment in the rate of Duty, against any unpaid balance or from the 1918-19 assessment.

2. EXCESS PROFITS DUTY.

- (a) The allowances for Income Tax purposes shall be followed except in those cases where the provisions of Section 47 of the Finance Act, 1916, are applied.
- (b) Where Section 47 is applied the purchaser shall be allowed only the depreciation which would have been granted to the vendor if the Steamship had not been sold (together with the extra 2 per cent. from the 6th April, 1917).
- (c) In cases falling under 1 (b) (*i.e.*, cases where the new scale is first adopted for 1918-19), such necessary adjustment shall be made as shall ensure that the Net Profits of the Standard period and of the Accounting Periods are calculated on the same basis. That is to say, the same annual amount of depreciation shall be adopted in both the Standard and Accounting Periods, except that the additional 2 per cent. Depreciation allowed in the Accounting Period shall be excluded from the Standard Period.
- (d) The additional 2 per cent. referred to in Clause 1 (d) above is to be regarded for Excess Profits Duty purposes as an additional wear and tear allowance, and it will not in any way restrict a claim by the owner under Section 40 (3) of the Finance No. 2 Act of 1915 in respect of the difference between the purchase price and the assumed post-War value. Such difference is necessarily reduced for the purposes of Section 40 (3) by the wear and tear allowance.

3. GENERAL.

- (a) These arrangements shall apply only to such changes of ownership as are "*genuine*." The decision as to whether the amended scale of depreciation is to be applied shall in any case of doubt rest with the Commissioners of Inland Revenue.
- (b) In no case shall the owner of a Steamship be entitled to receive in the aggregate a larger sum of depreciation than the actual cost to him of the Steamship, less its break-up value.
- (c) The allowance to be made in respect of any Steamship purchased, sold, or lost, during the year of assessment shall be a proportional part of the appropriate year's allowance.

It should be noted that where § 47 of the Finance Act, 1916, has been applied, under which, where ships

have been sold since the 4th August, 1914, in such circumstances that the Profits of the sale are not the Profits of the trade or business, and the Pre-War Standard of Profits of the purchaser and the vendor respectively has been adjusted in relation to the Pre-War Profits of the ships sold, the additional allowances for Wear and Tear shall not be applied, the purchaser being only allowed the depreciation which would have been granted to the vendor if the Steamship had not been sold, together with the extra 2 per cent. from the 6th April, 1917.

Where a new scale is adopted for second-hand ships the same annual amount of depreciation shall be deducted in both the Standard and Accounting Periods except so far as the additional 2 per cent. applies.

The additional 2 per cent. referred to in Clause 1 (*d*) will be allowed for Excess Profits Duty on all ships both new and second-hand as from the 6th April, 1917. This is to be regarded as an additional Wear and Tear allowance and will not be applied to the Pre-War Years. It will not in any way restrict a claim by the owner under § 40 (3) of the Finance (No. 2) Act, 1915, in respect of the difference between the purchase price and the assumed post-War value.

(d) Deferred Repairs, Surveys, Deferred Liabilities under Charters, &c.

In consequence of War conditions and the difficulty in getting repairs to ships carried out, many minor repairs have been postponed and the periodical surveys have frequently been delayed. Ships under requisition are often called upon to undertake voyages when they should be laid up for repairs, with the result that the repairs when eventually effected are more extensive and

much more costly than if they had been effected at the proper time. The earnings of boats under requisition being much less than when free, it may happen that heavy repairs falling into one Accounting Period might result in a loss or deficiency being sustained, as compared with the Pre-War Standard, especially in the case of single Ship Companies. Since no repayment of Duty or Set-off is allowed to shipping concerns as from 1st January, 1917, this point may be of considerable importance.

The proper course to adopt is to spread both Ordinary and Survey Repairs backwards from the date of each survey, both in the Pre-War and Accounting Periods, and where the deferred Repairs have not been executed, or the next Survey is not due, estimates should be made of the liability, which should then be apportioned accordingly. This will probably involve considerable adjustment of Duty liability from the commencement, but it is the only reasonable way of dealing with the matter in view of the considerations above mentioned and the varying rates of Duty. Where the final periods are dealt with by way of estimate, the assessments will have to be adjusted when the facts are ascertained.

Many Shipping Companies are under considerable contingent liabilities in consequence of suspension of Charters by reason of requisitioning, or for other causes, and although in some cases there may be no legal liability to fulfil the contracts, in others there is, and in others again, arrangements may have been mutually agreed on between the parties, which at anything like the current rates of freight must involve the Shipping Companies in considerable loss. It is contended that as these losses directly arise out of the War, provision

should be made for them over the respective Accounting Periods and for this purpose, the loss should be estimated at the end of each Accounting Period, assuming the Charters could then have been carried out on the basis then prevailing. As the cost has more or less continuously increased, this treatment will have the effect of spreading the loss over the Duty Periods in an equitable manner. This is, of course, a matter of arrangement with the Inland Revenue and will be subject to final adjustment when the facts can be definitely ascertained.

(e) Adjustments in connection with Ships Sunk or Lost.

So many ships have been sunk by enemy action or otherwise, that all Shipping Companies possessing fleets have lost a substantial proportion of their boats and important adjustments are necessary to arrive at the Statutory Capital. In most cases the insured value is greatly in excess of the book value, but the profit realized is a capital one and is not subject to Income Tax or Excess Profits Duty. Ordinarily this profit is carried straight to Reserve, being arrived at after crediting the Total Loss Account with the insurance money received and debiting such account with the book value of the boat and other expenses incidental to the sinking. Where Disbursement or Freight Policies have been taken out in addition to the policy on the hull and machinery, the moneys received thereon in respect of Disbursements or Freight actually at risk should in the first instance be credited against any debits on the Voyage Account, any balance of profit being regarded as additional cover on Hull and Machinery and treated as Capital Profit not subject to taxation. It is important to see that these matters are

properly dealt with, as otherwise the liability for Excess Profits Duty may be materially affected.

In computing the Statutory Capital at the date of the Balance Sheet, prior to the loss, the excess value should be brought in as increased Capital as from the date of sinking. For instance, if a ship were sunk on 31st March, 1917, and the Company's Capital is being computed as at 31st December, 1916, for the year ending 31st December, 1917, and the excess value on sinking is found to be £100,000, this is equivalent to an increased Capital for that year of £75,000.

As it has been impossible in most cases to replace losses, the moneys received have usually been invested in Treasury Bills, War Loan, National War Bonds, &c. The Inland Revenue contend that until it is possible to replace vessels lost, the moneys received in respect thereof cannot be employed in the business, and that the investment thereof must consequently be eliminated from the Capital, and the Income thereon from the Profits. They are, however, prepared to agree that if such vessels are replaced in any period within the continuance of the Duty the amount involved can be treated as Capital employed from the date of sinking, and adjustment made accordingly. This would be reasonable if the duty is likely to be continued till tonnage can be replaced, but if the duty comes to an end at, or soon after, the termination of the War, replacement will probably not be possible by that time, and this concession will prove of no advantage. In view of the National importance of the Shipping Industry and the vital necessity of Shipping Companies retaining in hand funds received on the loss of ships in order to enable them to replace such losses after the War, the question of the treatment of these matters

is not only of importance to the Industry but to the country. There are considerable arguments against the method agreed to by the Inland Revenue and it is possible that representations will be made to enable some other principle to be applied.

However this may be the complete elimination of War Investments resulting from shipping losses, irrespective of other considerations, is not the proper way of dealing with the matter. In order to ascertain the correct amount of War Loan, &c., to exclude, the working capital required for any Accounting Period should be computed in the manner described in Chapter IV., § 6, the amount of excess assets of a liquid nature representing the proportion of War Loan, &c., to be excluded.

Care should be taken to see that where the accumulated depreciation written off by the Company has been added back in computing the Statutory Capital at the commencement of each Accounting Period, and the accumulated wear and tear allowances deducted, those amounts relating to ships sunk are eliminated from the date of sinking, or otherwise adjusted, having regard to the way in which the book value of the boat and the depreciation thereon has been dealt with in the books.

SYNOPSIS OF CHAPTER III.

The Pre-War Standard of Profits.

- § 1.—THE PROFITS STANDARD.
- 2.—ABNORMAL DEPRESSION IN PRE-WAR PERIOD.
- 3.—ADJUSTMENT OF THE STATUTORY ALLOWANCE WHERE PRE-WAR STANDARD IS SMALL.
- 4.—PRE-WAR PERIOD LESS THAN THREE YEARS.
- 5.—PRE-WAR PERIOD LESS THAN TWO YEARS.
- 6.—PRE-WAR PERIOD LESS THAN ONE YEAR.
- 7.—THE PERCENTAGE STANDARD.
- 8.—REFERENCES TO THE BOARD OF REFEREES AS TO INCREASE OF PERCENTAGES, ETC.
- 9.—NEW AGENCIES OR BUSINESSES INVOLVING SMALL CAPITAL.
- 10.—CHANGE OF OWNERSHIP OF BUSINESS.

CHAPTER III.

THE PRE-WAR STANDARD OF PROFITS.

§ 1.—The Profits Standard.

The Pre-War Standard of Profits is normally a "Profits Standard" which is defined as the amount of the profits arising from the trade or business on the average of any two of the last three Pre-War Trade Years to be selected by the taxpayer, subject to certain modifications referred to below (§ 40 (2)). The two higher years will normally be selected for this purpose.

The Profits of any Pre-War Trade Year must be computed on the same principles and subject to the same provisions as the Profits of the Accounting Period are computed (Fourth Schedule, Part II., Rule 1).

This principle is known as the comparison of like with like and although adopted in general, it cannot be carried to extremes. Its application was raised in the Scottish case of *Inland Revenue v. Guthrie, Craig, Peter & Co., Ltd.*, where the Company purchased its business premises at Martinmas, 1914, subject to a feu duty. It was contended that as the Pre-War Standard was computed after deducting the rent of the premises, the profits of the Accounting Periods should be similarly reduced, but the Court held that there was no Statutory authority for doing so.

Presumably the purchase of the premises involved the employment of additional capital in respect of which allowance could be claimed, which would serve as a set-off against the rent charged in the Pre-War Periods.

The last Pre-War Trade Year is defined as meaning the year ending at the end of the last Accounting Period before the 5th August, 1914, and the last three Pre-War Trade Years mean the three years ending at the three corresponding times (§ 40 (2)).

Illustration.

The following are the adjusted Profits of a Company :—

Year ending 31st December, 1911, Profit ..	£5,000
" " " 1912, " ..	6,200
" " " 1913, " ..	7,500
" " " 1914, " ..	10,500
" " " 1915, " ..	14,000

The average of the two highest Pre-War years will be taken as follows :—

1912	£6,200
1913	7,500
	2)13,700
Profits Standard ..	<u>£6,850</u>

FIRST PERIOD 50 PER CENT. RATE.

Year ending 31st December, 1914, Profit ..	£10,500
Less Profits Standard £6,850	
Margin 200	
	<u>7,050</u>
Excess	<u>£3,450</u>
Duty Payable 50 per cent. ..	<u>£1,725</u>

SECOND PERIOD 60 PER CENT. RATE.

Year ending 31st December, 1915, Profit ..	£14,000
Less Profits Standard £6,850	
Margin 200	
	<u>7,050</u>
Excess	<u>£6,950</u>
Duty Payable 60 per cent. ..	<u>£4,170</u>

Where Interim Accounts have been prepared these must be taken as Accounting Periods (§ 51, 1916). Assume in the above Illustration that the Company's Accounts were presented yearly to the Shareholders at 31st December, but that Interim Accounts were prepared each half-year at 30th June and 31st December, and Stock taken. In that event the first Accounting Period would be the half-year ending 31st December, 1914, and the last Pre-War Trade Year would be the year ending 30th June, 1914. The Pre-War Standard would therefore be based on the two best of the three Pre-War years ending 30th June, 1914.

It has been suggested that as the Accounting Periods are half-yearly it should be possible to form the Pre-War Standard by selecting the four best half-yearly Periods irrespective of whether they run consecutively or not, but from the wording of § 40 (2) of the Principal Act it is clear that this cannot be done. The Pre-War Standard must be arrived at on a yearly basis and the years taken must in each case end at corresponding times.

Illustration.

Assuming the yearly Profits to be as in the previous Illustration but the half-yearly figures to be as follows :—

Half-year ending 31st Dec., 1911 ..	£2,500	
" " 30th June, 1912..	3,500	
	<hr/>	£6,000
" " 31st Dec., 1912 ..	2,700	
" " 30th June, 1913..	4,000	
	<hr/>	6,700
" " 31st Dec., 1913 ..	3,500	
" " 30th June, 1914..	2,800	
	<hr/>	6,300
" " 31st Dec., 1914 ..	7,700	
" " 30th June, 1915..	7,500	
" " 31st Dec., 1915 ..	6,500	
The Profits Standard would then be :—		
Year ending 30th June, 1913		£6,700
" " 1914		6,300
		<hr/>
		2)13,000
		<hr/>
		£6,500
		<hr/>

FIRST PERIOD 50 PER CENT. RATE.

Half-year to 31st December, 1914, Profit ..	£7,700
Less Half Profits Standard ..	£3,250
Half Margin.. ..	100
	<hr/>
	3,350
Excess	<hr/>
	£4,350
	<hr/>
Duty Payable 50 per cent. ..	<hr/>
	£2,175
	<hr/>

THE EXCESS PROFITS DUTY.

SECOND PERIOD 50 PER CENT. RATE.

Half-year to 30th June, 1915	£7,500
Less Half Profits Standard	£3,250
Half Margin	100
	<hr/>
	3,350
Excess	<hr/>
	£4,150
	<hr/>
Duty Payable 50 per cent. ..	<hr/>
	£2,075
	<hr/>

THIRD PERIOD 60 PER CENT. RATE.

Half-year to 31st December, 1915	£6,500
Less Half Profits Standard	£3,250
Half margin	100
	<hr/>
	3,350
Excess	<hr/>
	£3,150
	<hr/>
Duty Payable 60 per cent. ..	<hr/>
	£1,890
	<hr/>

Note to Illustration.

By taking half-yearly Accounts therefore the Profits Standard has been reduced from £6,850 as shown in the first Illustration to £6,500, and the total Duty payable in respect of Accounting Periods to 31st December, 1915, amounts to £6,140 for the three half-yearly periods as compared with £5,895 for the two yearly periods. In this case the half-yearly basis is in favour of the Revenue, but in other cases the Taxpayer may benefit.

Where the Commissioners are satisfied that in connection with any trade or business two or more distinct and independent industries are carried on in separate establishments, and with books kept in such a manner that the profits in respect of each industry can be readily ascertained; and that in any year by reference to which the Pre-War Standard of Profits is calculated a loss has been sustained in respect of any one or more of such industries: the Commissioners may, if they think fit, in computing the Profits Standard, disregard that loss (§ 26 (5), 1917). This provision only applies to Accounting Periods ending after 31st December, 1916.

§ 2.—Abnormal Depression in Pre-War Period.

Where it is shown to the satisfaction of the Commissioners of Inland Revenue that the last three Pre-War Trade Years have been years of abnormal depression, any four of the last six Pre-War Trade Years may be substituted in place of any two of the last three Pre-War Trade Years for the purpose of arriving at the Profits Standard.

The last three Pre-War Years will not be considered as years of abnormal depression unless the average profits of those years have been at least 25 % lower than the average profits of the preceding three years (Fourth Schedule, Part II., Rule 3).

The arithmetical test of abnormal depression will be sufficient evidence and it will not be necessary to prove special depression in the trade or business concerned.

The following Illustration shows the material effect of this provision where it is applicable :—

Illustration.

The following are the adjusted profits of a Company :—

Year ending 31st March, 1909, Profit	..	£60,000
" " 1910, "	..	54,000
" " 1911, "	..	45,000
" " 1912, "	..	35,000
" " 1913, "	..	40,000
" " 1914, "	..	36,000
" " 1915, "	..	65,000

The average Profits of the last three Pre-War years are as follows :—

1912	£35,000
1913	40,000
1914	36 000
						3)111,000
						£37,000

The average Profits of the three preceding years are :—

1909	£60,000
1910	54,000
1911	45,000
				3)	<u>159,000</u>
					<u>£53,000</u>

25 per cent. of £53,000 = £13,250 and the Average of the first three years less 25 per cent. is therefore £39,750, which is £2,750 greater than the Average of the last three Pre-War years. Any four of the last six Pre-War years can consequently be selected for the purpose of arriving at the Profits Standard as follows :—

PROFITS STANDARD.					
1909	..	Profit	£60,000
1910	..	„	54,000
1911	..	„	45,000
1913	..	„	40,000
				4)	<u>199,000</u>
		Profits Standard	..		<u>£49,750</u>
Profits, 1915					
	£65,000
	Less	Profits Standard	<u>49,750</u>
		Excess Profits	15,250
	Less	Allowance..	<u>200</u>
				2)	<u>15,050</u>
		Duty Payable 50 per cent.	..		<u>£7,525</u>

How material this concession may prove can be seen if the Profits Standard in this case had to be taken on the last three Pre-War years :—

PROFITS STANDARD.					
1913	..	Profit	£40,000
1914	..	„	36,000
				2)	<u>76,000</u>
		Profits Standard	..		<u>£38,000</u>

Profits, 1915.. .. .	£65,000
Less Profits Standard.. ..	38,000
	<hr/>
Excess Profits	27,000
Less Allowance.. .. .	200
	<hr/>
	2)26,800
Duty Payable 50 per cent. ..	13,400
Do. on four years Average as above	7,525
	<hr/>
Relief obtained	£5,875
	<hr/> <hr/>

§ 3.—Adjustment of the Statutory Allowance where Pre-War Standard is small.

In any Accounting Period ending after 31st December, 1916, where the Pre-War Standard of Profits does not exceed £500 and the Profits of the Accounting Period, after adjustments in respect of increased or decreased Capital, are less than £2,000, the Statutory Allowance of £200 shall be increased by one-fifth of the amount by which the Profits of the Accounting Period are less than £2,000 (§ 26 (4), 1917).

Illustration.

Pre-War Standard	£400
Profit for year ending 31st December, 1917, after adjustments for Capital	1,500
	<hr/>
Adjusted Profit, 1917	£1,500
Less Pre-War Standard	£400
Margin	£200
Add One-fifth of £500	100
	<hr/>
	300
	<hr/>
	700
	<hr/>
Excess	£800
	<hr/> <hr/>
Duty Payable 80 per cent.	£640
	<hr/> <hr/>

The same provisions apply where the Pre-War Standard exceeds £500 except that the amount of the addition is reduced by the amount by which the Pre-War Standard exceeds £500.

Illustration.

Pre-War Standard	£550
Profits for year ending 30th June, 1917, after adjustments for Capital	1,000
<hr/>	
Adjusted Profits, 1917.. ..	£1,000
Less Pre-War Standard	£550
Margin	£200
Add One-fifth of £1,000	200
<hr/>	
	400
Less Excess of Pre-War Standard over £500	50
<hr/>	
	350
<hr/>	
	900
<hr/>	
Excess	£100
<hr/>	
Duty Payable :—	
One-half at 60 per cent.	£30
„ „ 80 per cent.	40
<hr/>	
	£70
<hr/>	

If there has been a loss in the Accounting Period, in order to ascertain the amount of any repayment or set-off, the additional Allowance should be such as if there had been neither Loss nor Profit.

Illustration.

Pre-War Standard	£500
Loss for year ending 31st December, 1917..	1,000
<hr/>	
Loss	£1,000
Add Pre-War Standard	£500
Margin	£200
Add One-fifth of £2,000	400
<hr/>	
	600
<hr/>	
	1,100
<hr/>	
Deficiency	£2,100
<hr/>	
Set-off 80 per cent. thereof	£1,680
<hr/>	

Where an Accounting Period is less than a year the sums of £2,000 and £200 respectively must be proportionately reduced when making the calculations.

§ 4.—Pre-War Period less than Three Years.

Where there have not been three Pre-War Trade Years but only two, the Pre-War Standard of Profits will be the average of those two years, or at the option of the Taxpayer, the profits during the latter of the two years (Fourth Schedule, Part II., Rule 4).

Illustration.

The Adjusted Profits of a Firm which commenced business on 1st November, 1911, are as follow :—

Year ending 31st October, 1912, Profit ..	£2,000
" 1913, ..	500
" 1914, ..	3,000

PROFITS STANDARD.

1912 .. Profit	£2,000
1913 .. "	500

2)2,500

Profits Standard .. £1,250

Profits, 1914	£3,000
Less Profits Standard	1,250

Excess Profits 1,750

Less Allowance 200

2)1,550

Duty Payable 50 per cent. .. £775

Had the Profit for 1912 been £500 and 1913 £2,000, the Firm could have elected to take the year 1913 by itself as the Profits Standard with the following result :—

Profits, 1914	£3,000
Less Profits Standard	2,000

Excess Profits 1,000

Less Allowance 200

2)800

Duty Payable 50 per cent. .. £400

§ 5.—Pre-War Period less than Two Years.

Where there has been only one Pre-War Trade Year the Pre-War Standard shall be taken to be the Profits arising during that year (Fourth Schedule, Part II., Rule 4). Where the first Pre-War Period is more than one year but less than two, the Profits Standard should be arrived at by apportionment of the period.

Illustration.

A Company was incorporated on the 1st September, 1912, and the first Balance Sheet presented to the Shareholders is dated 31st December, 1913. The adjusted Profits are as follows :—

16 months to 31st December, 1913, Profit..	£5,000
Year to " " 1914 " ..	7,000
Profits, 1914	£7,000
Less Profits Standard, three-fourths of £5,000 ..	3,750
Excess Profits ..	3,250
Less Allowance.. ..	200
	<u>2)3,050</u>
Duty Payable 50 per cent. ..	<u>£1,525</u>

§ 6.—Pre-War Period less than One Year.

Where there has not been one Pre-War Year the Pre-War Standard shall be the Statutory Percentage on the average amount of Capital employed during each Accounting Period (not, it should be observed, during the Pre-War Period). (Fourth Schedule, Part II., Rule 4). This also applies to all New Businesses commenced since 4th August, 1914. It should be noted that this is the only case in which the Pre-War Standard varies with each Accounting Period.

Illustration.

A Firm commenced business on 1st January, 1914, with a Capital of £5,000, and the adjusted Profit for the Year ending

31st December, 1914, was £3,000. On 1st April, 1914, £2,000 additional Capital was introduced and on 1st November, 1914, a further £1,200.

The Average amount of Capital employed during the Accounting Period, viz., the Year ending 31st December, 1914 will be as follows:—

£5,000 for 12 months=for one year	£5,000
£2,000 „ 9 „ = „	1,500
£1,200 „ 2 „ = „	200
Average Capital			£6,700

Profits, 1914	£3,000
Less Percentage Standard, 7 %			
on £6,700	469
Excess Profits			2,531
Less Allowance..	200
			2)2,331

Duty Payable 50 per cent. £1,165 10 0

Where there has not been one Pre-War Trade Year 3 per cent. shall be added to the Statutory Percentage per annum in respect of Accounting Periods ending after 31st December, 1916, with a further additional 1 per cent. in the case of Firms (§ 26 (1) and (2), 1917).

Illustration.

The average amount of Capital employed by a Firm during the Accounting Period, viz., year ending 31st December, 1917, was £8,000, and the Adjusted Profits for that year £4,000.

Profit, 1917	£4,000
Less Percentage Standard 11 per				
cent. on £8,000		£880
Margin		200
				1,080

£2,920

Duty Payable 80 per cent. .. £2,336

§ 7.—The Percentage Standard.

The Percentage Standard will be taken to be an amount equal to the Statutory Percentage on the Capital of the trade or business as existing at the end of the last Pre-War Trade Year, subject, however, to any provisions of the Act as to alterations in the manner of calculating the Percentage Standard in special cases (§ 40 (2)). These are referred to in § 8 below.

The Capital must be computed in accordance with the provisions of Part III. of the Fourth Schedule which is dealt with in Chapter IV.

If it is shown to the satisfaction of the Commissioners of Inland Revenue that the Profits Standard was less than the Percentage Standard, the Pre-War Standard of Profits will be taken to be the Percentage Standard (§ 40 (2)).

The Statutory Percentage will be 6 per cent. in the case of a trade or business carried on or owned by a Company or other body corporate, and 7 per cent. in the case of any other trade or business, subject, however, to any provisions of the Act as to the increase of that percentage in certain cases (§ 40 (2)). These are dealt with in § 8 below.

In respect of Accounting Periods ending after 31st December, 1916, the Statutory Percentage will be increased by 3 per cent. in the case of Companies, and 4 per cent. in the case of any other Trade or Business so far as any Increased Capital is concerned, but this additional rate will not apply to the original Capital upon which the Percentage Standard was based except that an additional 1 per cent. will apply in the case of Firms (§ 26 (1) and (2), 1917), and except in cases dealt with in § 6.

The following is an Illustration in the case of a Company :—

Illustration.

Year ending 31st December, 1911, Profit ..	£5,000
" " 1912, " ..	2,000
" " 1913, Loss ..	1,000
" " 1914, Profit ..	8,000
" " 1917, " ..	10,000

The Capital of the Company for the purpose of the Act at 31st December, 1913, was £100,000, and at 31st December, 1916, £120,000.

PROFITS STANDARD.

1911 ..	Profit	£5,000
1912 ..	"	2,000
		<u>2)7,000</u>
	Profits Standard ..	<u>£3,500</u>

The Statutory Percentage on the Company's Capital at 6 per cent. amounts to £6,000, and this amount will therefore be substituted for £3,500 as the Standard.

The Duty payable will therefore be as follows :—

Profits, 1914..	£8,000
Less Percentage Standard ..	£6,000
Margin ..	200
	<u>6,200</u>
Excess ..	<u>£1,800</u>
Duty Payable 50 per cent. ..	<u>£900</u>
Profits, 1917..	£10,000
Less Percentage Standard ..	£6,000
9 per cent. on Increased Capital of £20,000 ..	1,800
Margin ..	200
	<u>8,000</u>
Excess ..	<u>£2,000</u>
Duty Payable 80 per cent. ..	<u>£1,600</u>

§ 8.—References to the Board of Referees as to Increase of Percentages, &c.

Application may be made to the Commissioners of Inland Revenue for an increase of the Statutory Percentage, or for the calculation of the Percentage Standard by reference to some factor other than Capital in certain instances, as follows :—

- (1) For an increase of the Statutory Percentage as respects any class of trade or business.
- (2) For a calculation of the Percentage Standard by reference to some factor other than the Capital, or to some additional factor, in the case of any class of trade or business in which the amount of Capital actually employed is, owing to the nature of the business, small, compared with the Capital necessarily at stake (§ 42).

Application may also be made to the Commissioners for an alteration of the Pre-War Standard of Profits as respects Capital employed for the purpose of the manufacture of War materials or for Munitions work, and which could not be expected to be remunerative, or wholly remunerative, except in time of War, in a business which has been wholly or mainly carried on for those purposes (§ 42).

The Commissioners have no power to decide such cases but unless they are of opinion that the application is frivolous or vexatious, or relates to matters already decided by the Board of Referees, they must refer the case to the Board of Referees who shall deal with the same, and who may by Order, if they think fit, increase the Statutory Percentage, or alter the Percentage Standard for the class of trade or business concerned,

or alter the Pre-War Standard of Profits, as the case requires (§ 42).

The effect of such an alteration will be to substitute the Percentage or Standard named in the Order for that fixed by the Act.

Any increase of the Statutory Percentage in respect of Accounting Periods ending after 31st December, 1916, shall be in addition to any increase of the Statutory Percentage which has been granted by the Board of Referees before the 2nd August, 1917, the date of the passing of the Finance Act, 1917.

Under § 25 of the Finance Act, 1917, the Commissioners may, if they think fit, refer to the Board of Referees any application made under § 42 of the principal Act, although the same may relate to matters already decided by the Board, and the Board may, if they think fit re-open the case, and make any order or revise any order previously made by them.

Claims can be made in respect of any sub-division of a trade or business, based either on any special features of the trade or business, or on locality, as it applies to a class of trade or business, in any case where the Board of Referees are of opinion that such sub-division can properly be dealt with separately (§ 42).

Claims under this Section should be preferred by the Body or Society (if any) representing the trade or business concerned, and it is most important that the case should be properly presented and supported by all material facts.

A considerable number of orders have been made increasing the Statutory Percentage and a list of these at the date of going to Press will be found in the Appendix, together with the necessary forms of application.

It will be observed that the provisions apply to a class of Trade or Business and not to individual businesses, and the evidence upon which the order will be made will depend on the average results of the class taken as a whole.

The following are some of the principal considerations which affect applications of this nature:—

- (1) The fact that a considerable portion of the Capital is represented by Wasting Assets.
- (2) The deferment of yield in the initial stages of the Industry.
- (3) Extra normal risk to Capital by reason of special circumstances, such as risk of loss, fluctuation in price of product, situation in foreign country, fluctuation in Exchange, &c.

The procedure to be followed in practice is in the first instance to define precisely the trade or business in respect of which the Application is made. It is essential to satisfy the Board that the great majority of the businesses within the definition are parties to the Application. Where the business is carried on in different geographical localities it is usual for the Application to be confined to a particular area as the conditions will generally vary according to locality.

Where the number of businesses affected by the Application is considerable, it is sometimes possible to arrange for evidence to be submitted in respect of representative concerns instead of all the businesses affected. When this point is settled particulars must be furnished to afford the following information, *inter alia*:—

- (1) Computations of Statutory Capital and Profits for the six Pre-War Years and for the Accounting Periods.

- (2) Statements of Fact showing the grounds on which the Application is based.
- (3) If one of the grounds of the Application is that the main assets of the business are of a Wasting nature, Statements should be furnished to show the Capital value of the assets liable to Wastage and evidence must be furnished of the estimated life of such assets.
- (4) If one of the grounds of the Application is that Capital invested in the Industry is subject to periods of deferment in the initial stages of the concern, Statements must be furnished showing the average period of deferment for the Industry and the proportion of Capital subject thereto.
- (5) If it is claimed that Capital in the Industry is subject to abnormal risks, Statements of the Capital lost over a period of years owing to the operation of such risks must be furnished. Such Statements should include particulars of Capital lost in Pre-War Years by businesses engaged in the Industry, whether or not such businesses have since gone into Liquidation, or are now moribund.
- (6) Where the grounds of the Application include risks arising from fluctuations in the rate of exchange or in the market price of the commodity produced, tables or charts showing these fluctuations over a period of years must be supplied.

The above exhausts the principal grounds upon which Applications of this nature are based, but where

other special grounds exist evidence in proof of the risk attaching thereto must be furnished on similar lines. It is important to note that the evidence supplied in this way must be of such a nature as to allow of the risk under each heading to be averaged over the whole of the businesses parties to the Application, as it is only in this manner that it is possible to calculate the appropriate additional percentage which should be granted in respect of each of the risks forming the grounds of the Application.

The calculation of the additional percentage applicable to a loss due to Wasting Assets is arrived at by ascertaining the average life of the asset subject to Wastage and the proportion of the Total Excess Profits Duty Capital of the Industry subject to Wastage. The rate of Wastage is determined by finding the percentage yield which would be required to replace the asset within the agreed life, allowing compound interest at 4 per cent. This figure is immediately apparent from a 4 per cent. Interest Table. From this is deducted the Statutory rate of 6 per cent. and also a further '65 per cent. representing the cost of replacement within a period of fifty years, the assumption being that the Statutory Percentage of 6 per cent. covers fifty years' life, and that no allowance for Wasting Assets should be made unless the expectation of life is below this period. When the additional percentage has been arrived at in this way a proportion thereof is taken equivalent to the proportion that the Total Capital of the Industry subject to Wastage bears to the Total Excess Profits Duty Capital of the Industry. The necessity for this is apparent when it is remembered that the percentage fixed is granted on the whole of the Excess Profits Duty Capital employed.

§ 9.—New Agencies or Businesses involving small Capital.

Where a business has been recently commenced and is an Agency or business of a nature involving Capital of a comparatively small amount, the Pre-War Standard may be based upon the profits arising from any trade, business, office, employment or profession of any sort, whether liable to Excess Profits Duty or not, carried on by the Agent or other person before his new business commenced, as if it were the same business; but only to the extent to which the income from the former business has been diminished (Fourth Schedule, Part II., Rule 4).

Illustration.

B. was engaged in business as a Commercial Traveller prior to the War, but on 1st July, 1914, ceased that employment and commenced to act as Agent for some American Firms.

His Income as Traveller was as follows :—

For the year ending 30th June, 1912	..	£600
" " " 1913	..	550
" " " 1914	..	580

His Accounts as Agent made up to 31st January, 1915, showed an adjusted Profit of £1,400. Subsequent to 1st July, 1914, his total Income as Commercial Traveller was £80, being balance of Commission due on repeat orders.

PRE-WAR STANDARD.

1912	..	Income as Traveller	..	£600
1914	..	„	..	580
				<u>2)1,180</u>
		Profits Standard	..	£590

Profits for 7 months to 31st January, 1915	£1,400
--	--------

Less Profits Standard $\frac{7}{12}$ of £590 ..	£344	
Less Income as Commercial Traveller subsequent to 1st July, 1914..	80	
	<hr/>	264
Excess Profits		1,136
Less Allowance $\frac{7}{12}$ of £200		117
		<hr/> 2)1,019
Excess Profits Duty Payable ..		£509

It will be observed that the inclusion of Pre-War Profits of a different trade or business only applies where the new trade or business is an Agency or business of a nature involving Capital of a comparatively small amount. In all other cases of new businesses a Percentage Standard must be applied.

Where the Accounting Period does not cover the full year, as in the Illustration where it only covers seven months, the Profits Standard must be apportioned correspondingly and the allowance of £200 must also be reduced to correspond with the Accounting Period, where the same is less than one year. The same considerations will apply when the Percentage Standard is adopted.

Where, as in the Illustration, part of the former income continues to be received, the Profits Standard must be reduced by the amount of such income received since the date up to which the Pre-War Standard was computed.

§ 10.—Change of Ownership of Business.

Where a business has changed ownership since the commencement of the last three Pre-War Trade Years, it is to be treated as if a new business had been commenced on the change of ownership, except where the Taxpayer makes application that the business should be treated as a continuing business.

In such a case such modifications (if any) must be made as may be necessary to make the basis on which the Profits Standard is computed the same as that on which the profits of the Accounting Period are computed (Fourth Schedule, Part II., Rule 5).

It will be seen that the option in such a case lies entirely with the Taxpayer and does not lie with the Commissioners, and that the Commissioners have no

power to refuse such an application though they can, of course, require such modifications to be made as they think proper.

Adjustments will no doubt require to be made in such cases where there have been alterations in the Capital, or where work in the case of the old business undertaken by salaried persons is undertaken by the partners of the new business, or *vice versâ*.

In the case of the business having been turned into a Limited Company and the principle of Succession claimed, adjustments as above must be made for charges applicable to the Company during the Accounting Period but not applicable to the business before it was turned into a Company, such as Directors' Fees, Interest on Debentures, or other items of a like character, so as to make the basis upon which the Profits Standard is computed the same as that upon which the profits of the Accounting Period are computed.

Where there has been a change of ownership, the Commissioners may, if they think fit, take the Accounting Period as the period ending on the date on which the ownership has so changed, and assess the Duty on the person who owned or carried on the trade or business, or acted as Agent for the person carrying on the trade or business at that date (§ 45 (2)).

Where there has been a change of Ownership and the business is treated as a succession, the new Owner cannot claim to set-off Losses or Deficiencies incurred by the original Owner in previous Accounting Periods, since any right of set-off in respect thereof ceases from the date of the change of Ownership (*Inland Revenue v. Gittus*, 147, L.T. 153).

Further, if the original owner has paid Excess Profits Duty, no claim for repayment of any part of such Duty can be made by a successor who may have an Excess Profits Duty deficiency.

SYNOPSIS OF CHAPTER IV.

Capital.

§ 1.—DEFINITION OF CAPITAL.

2.—COMPUTATION OF CAPITAL.

3.—VALUATION OF ASSETS FOR COMPUTATION OF CAPITAL.

(a) Where the Pre-War Standard is a Profits Standard.

(b) Where the Pre-War Standard is a Percentage Standard.

(1) Goodwill.

(2) Freehold Property.

(3) Leasehold Property and other Wasting Assets.

(4) Machinery and Plant.

(5) Patents.

4.—TREATMENT OF LIABILITIES AND ACCUMULATED PROFITS.

(a) Liabilities.

(b) Reserves for Excess Profits Duty and Income Tax

(c) Accumulated Profits.

5.—ADJUSTMENTS FOR INCREASED OR DECREASED CAPITAL.

(a) Where the Pre-War Standard is a Profits Standard.

(b) Where the Pre-War Standard is a Percentage Standard.

(c) Capital Unremunerative in Pre-War Period.

(d) Substitution of Assets.

6.—WAR INVESTMENTS, &C., AS CAPITAL.

7.—COMPUTATION OF LIABILITY OF A COMPANY.

8.—COMPUTATION OF LIABILITY OF A FIRM.

CHAPTER IV.

CAPITAL.

§ 1.—Definition of Capital.

The term Capital, as defined by Part III. of the Fourth Schedule, is not synonymous with the term Capital as applied to a Company or a Private Firm, but means the value of the Assets employed in the business at a given date, arrived at in accordance with the Rules, from which must be deducted the Liabilities.

The amount of the Capital of the trade or business, so far as it does not consist of money, is defined, for the purposes of the Act, as

- (a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money; and
- (b) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and
- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deduction for wear and tear or replacement.

- (d) Nothing shall prevent accumulated profits employed in the business being treated as Capital.

(Fourth Schedule, Part III., Rule 1).

§ 2.—Computation of Capital.

Any Capital, the income of which is not taken into account, and any borrowed money or debts, shall be deducted in computing the amount of Capital (Fourth Schedule, Part III., Rule 2).

The amount of Capital employed is therefore calculated by reference to the Assets, *less* certain Liabilities, and is not arrived at by taking the Share Capital or the Partners' Capital as the case may be. Consequently assets represented by Reserves, Profits carried forward, &c., will form part of the Capital, and this is why it is provided that nothing shall prevent accumulated profits being treated as Capital. What is really meant is that the assets representing such accumulated profits may form part of the Capital.

Where any asset has been paid for otherwise than in cash the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or a business has been converted into a Company, and the shares in the Company are wholly or mainly held by the person who was the owner of the trade or business, no value shall be attached to those shares so far as they are represented by Goodwill, or otherwise than by material assets, unless the Commissioners in special circumstances otherwise direct. Patents and Secret Processes shall be deemed to be material assets (Fourth Schedule, Part III., Rule 3).

The great majority of cases where an asset has been paid for otherwise than in cash are in reference to the issue of shares or debentures fully paid, and it is to be observed that in such cases the cost price of the asset is to be taken as the value of the purchase consideration at the time the asset was acquired.

Apart from any consideration of Goodwill it may be a very difficult matter to determine what the value of the shares issued fully paid was at the time of issue, and it by no means follows that the par value will be taken, although of course this will be the figure that would have appeared in the books. Where a market quotation existed in the shares this may be some guide as to their value, but in a great many cases, and particularly in the case of private Companies, no such information will be available, and very conflicting views may be taken as to the value of the shares at the time of issue, particularly where the business has been especially successful, or the reverse, since that date.

It is commonly the case that where the assets are acquired by the issue of shares, a higher price is paid by the Company than would have been paid had the consideration been cash, and apart from Goodwill, where the value of the shares is in dispute, the cash value of the assets at the time they were acquired by the Company, if this can be ascertained, will no doubt form some basis for the valuation of the shares at the time of issue, even although that value may have altered considerably since that date.

Whatever value is arrived at will be the cost price of the assets concerned, and must be subjected to proper deductions for wear and tear or replacement.

The only instance where no value is attached to

shares, represented by Goodwill or otherwise than by material assets, is where the shares in the Company are wholly or mainly held by the person who was the owner of the trade or business prior to its conversion into a Company. Companies of this nature are commonly termed "One-man Companies" but in the case of a Partnership, where the shares are still held by the partners to whom they were originally issued, the same rule will presumably apply, although companies of this nature are not generally termed "One-man Companies."

It will be observed that the share Capital as a whole is referred to, and not only the shares which were issued in consideration for Goodwill. Consequently, although the whole of the Goodwill shares might be in the hands of the person who was the original owner of the business, if other Capital had been issued for cash which was subscribed by other persons, it will be possible to include the Goodwill on the basis of the value of the shares allotted therefor at the time they were issued, though this value will not necessarily be the nominal value.

In the Irish case of *Bolands, Ltd., v. Inland Revenue*, 8,660 ordinary shares had been issued in 1888 as fully paid, as part of the purchase consideration, but as the value of the assets acquired had increased very considerably, it was claimed that these should be taken at their present value. The Court refused to admit this contention as being contrary to the provisions of Part III. of the Fourth Schedule, and found that the shares at the time of issue had no greater value than their face value. Under these circumstances, the ordinary rule was applicable, the assets being taken at cost price and the cost price being the value of the shares issued as consideration at the time

the assets were acquired. The Company also claimed that debentures should be treated as capital and that wheat not paid for, included in sundry creditors, should not be excluded. As these contentions were obviously contrary to the provisions of Part III., the Company's claim failed, and it is a little difficult to see what justification existed for making it.

§ 3.—Valuation of Assets for Computation of Capital.

(a) Where the Pre-War Standard is a Profits Standard.

Where the Pre-War Standard is a Profits Standard it is unnecessary to determine the value of the assets strictly in accordance with the provisions referred to above, since any alteration made on the first Balance Sheet of the Pre-War Period will operate throughout and will not affect any increase or decrease in the Capital employed.

The usual procedure, therefore, is to take the value of the assets according to the Balance Sheet at the commencement of the first Pre-War Year and only to adjust the values where the assets have been written down out of Profits.

In the case of Wear and Tear the amounts written off in the books should be added back to the value of the assets, and the amounts allowed as a charge in computing the Profits deducted.

Where assets have been written down and the amount so charged has been disallowed in the Profit and Loss Account, this can be added back to the value of the asset so as to keep the position the same as if

no amount had been written off. Otherwise if this were not done the Capital would be decreased, while no corresponding charge would have been allowed against the Profits.

(b) Where the Pre-War Standard is a Percentage Standard.

Where the Percentage Standard is adopted the valuation must be made strictly on the principles laid down in the Act, since this valuation will determine the Pre-War Standard. For this purpose it will be necessary to go right back to the first Balance Sheet and reconstruct the Asset Accounts by adding back the sums written off and deducting the proper allowances for Wear and Tear that would have been made for Income Tax purposes, whether or not in fact the same have been allowed. Where Reconstructions have taken place and the Capital has been written down it will be a question of fact as to whether the true standard cannot be based on the original figures, and in some cases where this can be done it makes a very large difference.

It may be convenient to enumerate some of the usual classes of assets and indicate the basis upon which their value is to be taken in each case for the purpose of computing the Capital of a business when the Percentage Standard is adopted :—

(1) *Goodwill.*

Where the Goodwill has been acquired by the payment of cash, the value to be included will be the cost price. Where it has been paid for by consideration other than cash, the cost price will be the value of such consideration at the time of purchase, except in cases where the shares in the Company are wholly or mainly

held by the person who was the owner of the trade or business, when no value can be attached to the shares representing the Goodwill.

In cases where the Goodwill has been increased in the books of the business by a book entry, which sometimes happens in the case of a Partnership, and less frequently in the case of Companies, no account can be taken of the value so arrived at; and where the book value of the Goodwill has been written down out of profits or otherwise, the item should be included at the original cost price.

(2) *Freehold Property.*

If this asset has been purchased for cash, the value will be the amount paid, and no deduction should be made for depreciation as the only deductions allowed are in respect of wear and tear or replacements. As far as wear and tear is concerned, this phrase means wear and tear of Plant, &c., as admitted for Income Tax purposes, and does not govern depreciation of property except in so far as special allowances may be made in respect of Accounting Periods.

Where the purchase consideration for the property was other than cash, the value will be the value of the consideration at the time the purchase was made.

(3) *Leasehold Property and other Wasting Assets.*

The value to be taken for the Percentage Standard in the case of leasehold property and other wasting assets will be cost irrespective of what proportion of the asset has been subject to depreciation by effluxion of time.

In most cases the earning power of the asset remains the same while it continues to exist, and this is the real

test to determine the value at which it is to be included. In the case of a lease, the earning power for any Accounting Period is the same whether the lease has thirty years to run or whether it has five.

(4) *Machinery and Plant.*

This Asset must be included as cost, less proper deductions for wear and tear or replacement, from the date of acquisition, whether such allowances have been made for Income Tax purposes or not.

(5) *Patents.*

Patents which have not lapsed by effluxion of time or by non-renewal of fees, can be included at their original cost. Where, therefore, there is a total amount standing to the debit of the Patent Account, it will be necessary to ascertain what proportion represents the cost of Patents still in operation. No amount can be included representing the cost of lapsed Patents as these no longer represent Capital employed in the business.

The Treasury have made a regulation under § 40 (3) of the principal Act under which the Commissioners can allow a modification of the provisions of the Fourth Schedule owing to depreciation through effluxion of time of any capital which is employed in the trade or business, and which is expended upon and consists of patent rights, so far as such depreciation is not offset by goodwill arising from the user of, or interest in, such rights.

Where such depreciation has been allowed the Patent should be brought into account at its written down value for the purpose of computing Capital.

§ 4.—Treatment of Liabilities and Accumulated Profits.

(a) Liabilities.

From the total value of the Assets arrived at on the above lines must be deducted any amounts for unpaid purchase money, borrowed money, or Debts due by the business. Under this heading will be included Debentures, Loans on Mortgage, Sundry Creditors, Bills Payable, &c

(b) Reserves for Excess Profits Duty and Income Tax.

Assessments for Excess Profits Duty are payable two months after the date thereof and need not be treated as liabilities until the due date. It is usual, however, to find provision made for the estimated liability to date by way of a Reserve on the Balance Sheet, though in some cases this is allowed for in the amount carried forward to the credit of Profit and Loss. Where any Reserve appears in the Balance Sheet, the same need not be treated as a liability in computing the Capital, although in fact it may be paid away two or three months later.

Similarly, Reserves for Income Tax need not be treated as liabilities, unless actually due for payment. In consequence of the rise in the rate of tax in recent years, it has become customary to make Reserves, not only in the case of Companies but also frequently in Private Firms. Such Reserves may not have been made in Pre-War years when the Tax was low, or in any event would have been much smaller. Usually the amount is not shewn separately in the Balance Sheet, but is included under the heading of Sundry Creditors and it is easy to overlook the point in computing the Capital. It is apparent, however, that the treatment

of such credit balances as Capital employed instead of as liabilities, may make a very considerable difference in the amount of Duty payable if they shew a progressive increase in the Accounting Periods, as is commonly the case. Further, the additional allowance for increased capital applicable to Accounting Periods ending after 31st December, 1916, makes the point still more important.

Where the Balance Sheet is dated 31st December and Reserve is made for Income Tax payable the 1st January following, such Reserve is now regarded by the Inland Revenue as a liability on the ground that the Capital employed should be computed as at the commencement of the Accounting Period, viz.: 1st January, when the Income Tax due in fact becomes a liability. It is understood that where no such Reserve has been made in the Accounts at 31st December, the amount payable will notwithstanding be treated as a liability in computing the Capital. Otherwise those businesses making a Reserve would be placed at a disadvantage. This treatment does not extend to any Reserves for Income Tax in Balance Sheets at any date other than 31st December unless the same is in respect of amounts actually due. In the case of Firms, &c., where the second Instalment of Income Tax is due 1st July, this amount should be treated as a Liability where the Capital is computed on a Balance Sheet at 30th June.

(c) Accumulated Profits.

It may be observed that Rule 1 of Part III. of the Fourth Schedule merely states that nothing shall prevent accumulated profits employed in the business being treated as Capital.

It was suggested that Accumulated Profits should be treated as Capital during the Accounting Period in proportion to the length of the Period, but it is now provided that Profits arising and accumulating during any Accounting Period are not to be treated as Accumulated Profits or as Capital employed during that Period (§ 52, 1916).

Such Profits, therefore, do not come into account until they are determined, and it will then be a question of fact as to what proportion continues to be employed in the business.

In the case of a Company, Final Dividends paid after the date of the Balance Sheet must be treated as Liabilities and the net amount of such Dividends deducted in computing the Capital. Where, however, these Dividends are paid some time after the date of the Balance Sheet, it is only necessary to bring in a *pro rata* deduction, as up to the time the Dividend was paid the Profit is regarded as being utilized in the business. In the computation of an optional Percentage Standard, it should be noted that the Final Dividend for the last Pre-War Year paid during the First Accounting Period, is a decrease of Capital during that Period—no proportion of this Dividend should be deducted in computing the Percentage Standard Capital.

In the case of Private Firms where Partners have separate Capital and Current Accounts, the latter being credited with profits and interest and debited with drawings, the balances on both Capital and Current Accounts at the date of the Balance Sheet can be treated as Capital, even if the credit balances on the Current Accounts are withdrawn shortly after that date. All drawings made in the next Period can be regarded as

drawings out of Profits accumulating in that Period however the amounts are treated in the books of the Firm, unless of course they are out of proportion to the Profits earned, in which case they may have to be treated as withdrawals of Capital.

§ 5.—Adjustments for Increased or Decreased Capital.

(a) Where the Pre-War Standard is a Profits Standard.

Where Capital has been increased during the Accounting Period, a deduction must be made from the Profits of the Accounting Period at the Statutory Percentage per annum on the amount by which the Capital has been increased, for that part, or the whole of the Accounting Period, during which the increased Capital has been employed, as the case may be. A corresponding adjustment must be made where Capital has been decreased during the Accounting Period, an addition being made to the profits of the Accounting Period arrived at in the same manner (§ 41 (1) and (2)).

Where the Pre-War Standard of Profits is a Profits Standard, Capital shall be taken to be increased or decreased, as the case may be, if the Capital employed exceeds or is less than the average amount of Capital employed during the Pre-War Trade Year, or Years, forming the basis of the Profits Standard.

Before it can be ascertained whether the Capital has increased or decreased during the Accounting Period, it is necessary, where the Pre-War Standard of Profits is a Profits Standard, to arrive at the average amount of Capital employed during the Pre-War Years, or Year, forming the basis of the Profits Standard. For this purpose, the average of the Capital employed

during each of the two years selected out of the three Pre-War Years, upon which the average is taken, must be ascertained, or in cases of abnormal depression, during each of the four years selected out of the six Pre-War Trade Years; or where only one Pre-War Trade Year is taken as the Profits Standard, the average Capital for that year.

The Average Capital for any year will be the amount of Capital at the commencement of the year adjusted by reference to any Increase or Decrease of Capital during the year, according to the date when such Increase or Decrease took place.

When the Average Capital for each of the years in question has been arrived at, the sums so obtained must be added together, and divided by the number of years forming the basis of the Profits Standard. The resulting figure should then be compared with the Average Capital employed during the Accounting Period, when it can be seen whether the same has increased or decreased.

Illustration.

The Capital employed in a Company, taking Annual Accounts at 31st December in each year has been as follows :—

At 31st December, 1910	..	£40,000
„ „ 1911	..	45,000
„ „ 1912	..	42,000
„ „ 1913	..	48,000
„ „ 1914	..	54,000

It is assumed in this case that the Increases or Decreases have been caused in each year by the employment or withdrawal of Accumulated Profits and not by new Capital introduced.

Where the Capital has been increased or decreased merely by the increase or withdrawal of Accumulated Profits the determining date when such Profits become Capital for this purpose is the date when they are ascertained; and the amount to be included will be the Assets representing the same at such date, less whatever proportion of the Profits is to be distributed (and is

subsequently distributed in respect of the Profits of the period in question) whether in dividends to Shareholders, or otherwise, as the case may be.

The Capital employed during each of the years in question will be the Capital at the commencement of each of those years, computed in accordance with the Act.

Assuming the Profits Standard of a Company to be based on the Profits of the years 1911 and 1913 the Average Capital employed during those years will be as follows:—

Year 1911—

Amount as at 1st January, 1911	..	£40,000
--------------------------------	----	---------

Year 1913—

Amount as at 1st January, 1913	..	42,000
--------------------------------	----	--------

		<u>2)82,000</u>
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Average Capital in Pre-War Period	..	£41,000
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The Capital employed during the Accounting Period will be the Capital as at 1st January, 1914, viz.: £48,000.

INCREASE OF CAPITAL.

Average Capital in Accounting Period ..		£48,000
<i>Less</i> Pre-War Period ..		<u>41,000</u>
Increase		<u>£7,000</u>

Assuming the Profits of the Accounting Period are £18,000, and the Profits Standard is £14,000 the Duty Payable will be as follows:—

Profits, 1914.. .. .	£18,000
<i>Less</i> Allowance for Increased Capital	
6 per cent. on £7,000	420
	<u>17,580</u>
<i>Less</i> Profits Standard.. ..	<u>14,000</u>
Excess Profits	3,580
<i>Less</i> Allowance.. .. .	200
	<u>2)3,380</u>
Excess Profits Duty Payable 50 per cent.	<u>£1,690</u>

Assuming the Capital to have decreased £7,000 during the Accounting Period, the Duty payable would be as follows:—

Profits, 1914.. .. .	£18,000
Add Allowance for Decreased Capital	
6 per cent. on £7,000	420
	<hr/>
	18,420
Less Profits Standard.. .. .	14,000
	<hr/>
Excess Profits	4,420
Less Allowance.. .. .	200
	<hr/>
	2)4,220
Excess Profits Duty Payable 50 per cent.	<u>£2,110</u>

In respect of Accounting Periods ending after 31st December, 1916, the Statutory Percentage is increased by 3 per cent. in the case of Companies or other bodies Corporate and 4 per cent. in the case of any other Trade or Business, so far as any Increased Capital is concerned, but these additional rates will not apply to any decrease of Capital (§ 26 (1), (2) and (3), 1917).

Illustration.

The following particulars apply to a Company:—

Average Capital in Pre-War Period ..	£41,000
Capital employed in Accounting Period—	
Year to 30th June, 1917.. ..	61,000
Profits Standard	14,000
Profits—Year to 30th June, 1917 ..	20,000
	<hr/>
Profits, 1917	20,000
Less Allowance for Increased	
Capital 9 per cent. on	
£20,000	£1,800
Profits Standard	14,000
Margin	200
	<hr/>
	16,000
Excess	<u>£4,000</u>
	<hr/>
Duty Payable:—	
Six months at 60 per cent. ..	£1,200
" " 80 " ..	1,600
	<hr/>
	<u>£2,800</u>

Where half-yearly Accounts have been prepared, even although these may be of an Interim character, the Accounting Periods will be half-yearly, and the Capital must be computed accordingly both for the Pre-War and Accounting Periods.

Illustration.

The Capital employed in a Company taking Annual Accounts at 31st December each year, but preparing proper Interim Accounts and ascertaining Profits half-yearly, was as follows :—

Average Pre-War Capital	£80,000
At 30th June, 1914	86,000
„ 31st December, 1914	94,000

The Capital employed in the First Accounting Period, the half-year ending 31st December, 1914, will be £86,000, and the increase £6,000 on which the allowance of 6 per cent. for 6 months will be £180. The allowance for the Second Accounting Period will be 6 per cent. on £14,000 for 6 months = £420.

Where Additional Capital has been specifically introduced at any date or dates by the issue of further Shares in the case of a Company, or by the payment of Cash into the business in the case of a Firm, the precise date or dates when the Capital was so increased will be known, and the calculation of the Average Capital can be made accordingly.

Illustration.

A Firm's Capital at 31st March, 1914, computed in accordance with the Act, was £30,000, and at 31st March, 1915, £50,000. Fresh Capital was introduced at the following dates :—

30th June, 1914	£6,000
30th November, 1914	7,500
31st January, 1915	1,200

The balance of the Additional Capital was due to Accumulated Profits.

The Average Capital employed during the year ending 31st March, 1915, will be as follows :—

At 1st April, 1914, £30,000		
for 12 months = ..	$\frac{30,000 \times 12}{12}$	£30,000
At 1st July, 1914, £6,000 for		
9 months =	$\frac{6,000 \times 9}{12}$	4,500
At 1st December, 1914, £7,500		
for 4 months = ..	$\frac{7,500 \times 4}{12}$	2,500
At 1st February, 1915 £1,200		
for 2 months = ..	$\frac{1,200 \times 2}{12}$	200
Average Capital employed		<u>£37,200</u>

Where the Profits of any two Pre-War Years are similar in amount it will be advantageous to select the year in which the smaller amount of Capital was employed, in order to lower the Pre-War Average Capital, and so obtain a corresponding advantage in the Accounting Period.

In some cases there is a Deficiency of Capital either because there is an actual deficiency or because some of the assets have to be excluded in computing the Capital, *e.g.* where large amounts of Investments are held which have to be excluded.

Where this is the case an adjustment for increased Capital should be made on the same basis as when there is a credit balance, any decrease in the Deficiency being equivalent to an increase in Capital. Where there is a Pre-War Deficiency of Capital and any Accounting Period shews an increase in such Deficiency, the Capital is treated as nil in each case and the difference is not treated as a decrease of Capital, unless a claim is made in some other Accounting Period for increased Capital due to a decreased debit balance.

(b) Where the Pre-War Standard is a Percentage Standard.

Where the Pre-War Standard of Profits is a Percentage Standard, the Capital upon which the Percentage Standard has been calculated will form the basis by reference to which it can be ascertained whether the Capital employed during the Accounting Period has increased or decreased. The Percentage Standard itself must be calculated on the Capital of the Trade or Business as existing at the end of the last Pre-War Trade Year (§§ 41 (3), 40 (2)), except in the case dealt with in § 6 of Chapter III, where no question arises as to increased or decreased Capital allowances.

Illustration.

The last Pre-War Trade year of a Company ended on 31st August, 1913, and the Capital at that date amounted to £90,000. The Percentage Standard is adopted and the rate is 6 per cent. During the year ended 31st August, 1914, new Capital was issued producing £24,000, the average date of the payment of Calls being 31st December, 1913. The profits for the year ending 31st August, 1914, were £9,000.

Capital at 1st September, 1913,	£90,000	=	£90,000
Add „ 31st December, 1913	24,000 × 8	=	16,000
		12	
Average Capital for year	..		£106,000
Profits for year ending 31st August, 1914			£9,000
Less Allowance for Increased Capital			
6 per cent. on £16,000	..		960
			8,040
Less Percentage Standard 6 per cent.			
on £90,000		5,400
Excess Profits		2,640
Less Allowance..		200
			2)2,440
Excess Profits Duty Payable 50 per cent.			£1,220

In respect of any Accounting Period ending after 31st December, 1916, the Statutory Percentage will be

increased by 3 per cent. in the case of Companies, and 4 per cent. in the case of any other Trade or Business, so far as any increased Capital is concerned, but this additional rate will not apply to the original capital upon which the Percentage Standard was based except in cases where there has not been one Pre-War Trade Year. The extra 1 per cent, however, will apply in all cases to Firms (§ 26 (1) and (2), 1917). An Illustration of this is given in Chapter III., § 7.

In respect of any Accounting Period ending after 31st December, 1916, where the Percentage Standard is adopted, and the Commissioners are satisfied that during the last six Pre-War Trade Years, owing to Trading Losses, any former assets of any Trade or Business have ceased to form part of that Trade or Business; or the money borrowed in respect of the Trade or Business, or the debts of the Trade or Business have increased, the Commissioners shall, for the purposes of ascertaining the Capital, treat the same as if there has been no such loss of assets or increase of borrowed money or debts (§ 26 (6), 1917).

This concession is very considerable and in effect the balance of Adjusted Losses over Adjusted Profits in the last six Pre-War Years will represent the amount to be treated as Capital for this purpose. It is obvious that where Losses have been sustained either former assets have ceased to exist or the liabilities must have increased.

(c) Capital unremunerative in Pre-War Period.

Where any Capital has been employed in a Trade or Business for the first time within three years before the 1st day of August, 1914, and has only commenced to be remunerative or fully remunerative in the

Accounting Period, an amount equal to the Statutory Percentage, or where Interest has been earned on the Capital at a rate less than the Statutory Percentage, an amount which would bring the Interest on the Capital up to the Statutory Percentage, as the case may be, should be added to the Profits Standard (§ 41 (4)).

In respect of any Accounting Period ending after the 31st December, 1916, Six Years shall be substituted for Three Years for the purpose of this Section (§ 26 (7), 1917).

Section 41 (4) was indifferently drafted and results in some cases in a double allowance, which was presumably not intended. Where a Profits Standard is based on the years 1911 and 1912 and the Unremunerative Capital is invested in 1913 and first becomes Remunerative in 1914, allowance will be made in the first place as Increased Capital, and secondly by way of addition to the Profits Standard.

It would appear that there is no question of apportionment of Periods and that even although the Capital was only Remunerative for a short time in the first Accounting Period, the full rate per cent. should be added to the Profits Standard, notwithstanding this fact.

Proof of the fact that the Capital was Unremunerative and the date of it becoming Remunerative is required, but where the claim is admitted and results in any double allowance as above mentioned, the Board of Inland Revenue do not dispute this reading of the section.

The necessary evidence is in many cases difficult to produce and claims are usually a matter of negotiation.

(d) Substitution of Assets.

Where any business or trade is confined to the management of any particular assets, but power is given to substitute other assets, such substitution shall not be deemed to constitute a change of ownership, but the Capital of the trade or business shall be taken to be increased or decreased as the case may be by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the Capital representing the assets purchased shall be estimated on the same basis (Fourth Schedule, Part II., Rule 6).

This Rule applied particularly to the case of Shipping Companies or Firms where a Ship had been sold and a new Ship purchased.

Where, however, in the case of the sale of a Ship and the purchase of another Ship the Pre-War Standard has been adjusted or determined under § 47 of the Finance Act, 1916, this Rule does not apply.

Illustration.

An Asset of the Pre-War value of £80,000 was sold for £150,000 and another Asset was purchased to take its place for £175,000.

Price of New Asset purchased	£175,000
Price obtained for Asset sold	150,000
		<hr/>
Increase of Capital	£25,000
		<hr/>
Pre-War Capital value of original Asset	..	£80,000
Add Increase of Capital as above	..	25,000
		<hr/>
Capital value of New Asset	..	£105,000
		<hr/>

The New Asset costing £175,000 will therefore be taken into account, for the purpose of computing the Capital, at £105,000.

If the New Asset had cost £120,000 the calculation would have been as follows :—

Price of New Asset purchased	£120,000
Price obtained for Asset sold	150,000
Decrease of Capital ..	<u>£30,000</u>
Pre-War Capital value of original Asset ..	£80,000
Less Decrease of Capital as above ..	30,000
Capital value of New Asset ..	<u>£50,000</u>

The New Asset costing £120,000 will therefore be taken into account, for the purpose of computing the Capital, at £50,000.

§ 6.—War Investments, &c., as Capital.

Reference has been made in Chapter II., § 8, to the treatment of War Investments and Bank Deposits as Capital. It was there pointed out that the Board of Inland Revenue can only regard money placed on deposit in a Bank, invested in Treasury Bills, in War Loan, National War Bonds, or Exchequer Bonds, as employed in the business if the money will be required within a limited period for the purposes of the business.

Since the allowance on the Increased Capital has been increased to 9 per cent. in the case of Companies and 11 per cent. in the case of Firms, this question becomes of great importance where the holdings of this nature are considerable, as in effect it means that where such holdings can be treated as Capital, allowance of 9 per cent. or 11 per cent. as the case may be, is made on the one hand, while on the other the Income on such Investments must be brought into account. As the Income is in no case at a much higher rate than 5 per cent. and in the case of Treasury Bills and Bank Deposits is sometimes considerably less the difference in favour of the taxpayer is important, and is particularly emphasized in the case of those businesses

where the Statutory Percentage has been increased on an application to the Board of Referees.

It is contended that the proper method of ascertaining what proportion of these sums should be regarded as employed in the business is to prepare Statements as at the date of each Computation of Capital showing the total liquid assets, including Deposits and War Securities, from which should be deducted the Current Liabilities, the Liability for Excess Profits Duty and Income Tax to the date of the Computation, the amount payable as Final Dividends, and a sum varying in amount according to the size and nature of the business to represent a fair average of cash balance at the Bank required for the purpose of current operations. The last sum should take into account *inter alia* the increased cost of all materials, &c., used in the business.

If there is an excess of Capital on this basis this will represent roughly the proportion of the War Securities and Deposits not required for the purpose of the business, subject to any other special considerations that may arise, and will form a useful guide in determining the necessary amount thereof to exclude in computing the Capital for the purpose of Excess Profits Duty.

Illustration.

STATEMENT OF WORKING CAPITAL REQUIRED.

	31st Dec., 1915.	31st Dec., 1916.	31st Dec., 1917.		31st Dec., 1915.	31st Dec., 1916.	31st Dec., 1917.
	£	£	£		£	£	£
Sundry Creditors...	328,000	340,000	330,000	War Securities, &c. ...	100,000	320,000	350,000
Excess Profits Duty	70,000	99,000	120,000	Stock-in-Trade	240,000	255,000	310,000
Income Tax	8,000	20,000	25,000	Sundry Debtors	121,000	124,000	130,000
Final Dividends ...	30,000	30,000	50,000	Cash at Bank...	51,000	59,000	45,000
Working Cash							
Balance ...	50,000	75,000	100,000				
Excess of Working							
Capital ...	26,000	194,000	210,000				
	£512,000	£758,000	£835,000		£512,000	£758,000	£835,000
Amount of War Securities, &c., to exclude for Capital purposes, say— ...	£25,000	£190,000	£200,000				

In this case the Balance Sheets -from which the Capital was computed for the purpose of Excess Profits Duty were dated 31st December in each year. It is immaterial whether provision had been made in such Balance Sheets for the Excess Profits Duty and Income Tax payable or not. The practice under this heading differs and in many cases Companies allow for these Liabilities in their carry forward rather than by way of specific provision. Nevertheless the fact remains that the money must be found for the payment of the same in the future, and accordingly these sums must be taken into account. If Capital Expenditure has been contracted for but not yet incurred, provision should also be made for the payment of the amounts involved.

When the amount that it is necessary to exclude has been determined the Income arising therefrom in the Accounting Period prior to the date of the determination, should be excluded from the Profits of that Period, e.g., if at 31st December, 1916, it is ascertained that £100,000 of War Securities should be excluded, the Income arising from such Securities, and included in the Profits of the year 1916, should be eliminated. although the elimination of the Capital sum will only take effect in the Capital employed for the year 1917.

Where it has been agreed that the whole or some portion of the War Securities or Deposits should be treated as Capital, the Income therefrom must be brought into account and where any part of such income has been received less Income Tax, and only the net amount credited to Profit and Loss Account the Income Tax on such Interest must also be included, as Income Tax is not allowed as a deduction in computing Profits for Excess Profits Duty.

The determination of these matters is a question of negotiation with the Inland Revenue and each case must be dealt with on its merits. In most cases the question arises when the Capital has increased over the Pre-War Period and the true increase employed in the business has then to be determined. Where, however, by treating War Investments as not employed the effect is to reduce the Capital of the Accounting Period below the Pre-War Standard of Capital, there are strong *primâ facie* grounds for claiming that at least to that extent the War Securities should be treated as Capital. This particularly arises in cases where owing to War conditions or restrictions Capital cannot for the time being be fully employed but will again be employed as soon as such restrictions are removed. The intention when making the investment is also an important consideration.

Where War Loan is purchased out of moneys formerly on deposit and while on deposit treated as Capital, the War Loan should be similarly treated, but where the War Loan was acquired with the proceeds of investments which formerly were excluded from the Capital the same cannot be regarded as Capital, since the effect of so doing would be to create an artificial increase in Capital.

Where Loans have been obtained from the Bank for the purpose of acquiring War Loan or money has been borrowed on the security of War Loan for the purpose of carrying on the business, the proportion of the War Loan to the amount of such borrowing should be treated as Capital, and it will only be in respect of the balance of the War Loan that questions will arise.

Where War Loan or other Government Securities are treated as Capital employed in the business for Excess Profits Duty purposes, any Loss or Gain on sale of same should be treated as a Trading Loss or Gain in computing the Profits.

§ 7.—Computation of the Liability of a Company.

The following is an Illustration of the Computation of Liability of a Company to Excess Profits Duty showing how the Pre-War Standard of Profits and Capital is arrived at, and the Deficiencies and Duty payable in respect of the Accounting Periods. It has been thought unnecessary to print the original accounts from which these Computations have been framed as all the adjustments are clearly shown in the working of the Illustration in conjunction with the Notes appended. The Company's year ends at 31st October.

Illustration.

PROFIT AND LOSS ADJUSTMENT ACCOUNT,

<i>Dr.</i>	1911.	1912.	1913.		1911.	1912.	1913.	<i>Cr.</i>
	£	£	£		£	£	£	
To Interest on Investments ...	4,500	3,000	5,000	By Profit ...	24,000	23,000	19,000	
„ Wear and Tear allowed ...	2,700	2,600	2,700	„ Transfer to Reserve Account ...	4,000	—	—	
„ Profits adjusted for Excess Profits Duty ...	24,800	23,900	12,800	„ Depreciation written off ...	2,000	5,000	—	
				„ Income Tax ...	2,000	1,500	1,500	
	<u>£32,000</u>	<u>£29,500</u>	<u>£20,500</u>		<u>£32,000</u>	<u>£29,500</u>	<u>£20,500</u>	

PRE-WAR STANDARD.

Profit year to 31st Oct., 1911	£24,800
„ „ „ 1912	23,900
			<u>2,48,700</u>
			<u>£24,350</u>

COMPUTATION OF STATUTORY CAPITAL,

Dr.

PRE-WAR PERIODS.

Cr.

	31st Oct. 1910.	31st Oct., 1911.	31st Oct., 1912.		31st Oct., 1910.	31st Oct., 1911.	31st Oct., 1912.
	£	£	£		£	£	£
To Investments ...	99,000	106,000	119,000	By Assets as per			
„ Bills Payable...	60 500	29,000	—	Balance Sheet	289,000	275,000	245,000
„ Sundry Credit-				„ Depreciation			
ors ...	8,000	13,000	12,000	Written off ...	—	2,000	5,000
„ Proportion of				„ Do., as before	—	—	2,000
Net Final Divi-				„ Income Tax			
dends paid in				Reserve in			
1911 ...	7,500	—	—	Creditors ...	1,500	1,500	1,500
„ Do. do. 1912	—	14,000	—				
„ Do. do. 1913	—	—	14,000				
„ Wear and Tear							
allowed ...	—	2,700	2,600				
„ Do., as before	—	—	2,700				
„ Balance, being							
Statutory							
Capital ...	115,500	113,800	103,200				
	<u>£290,500</u>	<u>£278,500</u>	<u>£253,500</u>		<u>£290,500</u>	<u>£278,500</u>	<u>£253,500</u>

PRE-WAR CAPITAL.

31st October, 1910	£115,500
„ „ 1911	113,800
			<u>2)229,300</u>
			<u>£114,650</u>

Dr. PROFIT AND LOSS ADJUSTMENT ACCOUNTS.—ACCOUNTING PERIODS.

Dr.

Cr.

	1914.	1915.	1916.	1917.		1914.	1915.	1916.	1917.
To Interest on Investments ...	£ 6,000	£ 5,000	£ 7,000	£ 8,000	By Profit ...	£ 25,500	£ 32,000	£ 47,000	£ 54,000
Wear and Tear allowed ...	2,500	2,500	2,500	2,500	" Income Tax ...	2,000	2,000	2,000	2,500
Profit adjusted for Excess Profits Duty ...	20,000	28,900	41,500	53,000	" Depreciation ...	1,000	1,500	1,000	1,000
					" Loss on Realization of Investments ...	—	—	—	5,000
					" Gross Interest on Investments (War Loan, Treasury Bills, &c.,) treated as Working Capital ...	—	900	1,000	1,000
	<u>£28,500</u>	<u>£36,400</u>	<u>£51,000</u>	<u>£63,500</u>		<u>£28,500</u>	<u>£36,400</u>	<u>£51,000</u>	<u>£63,500</u>

COMPUTATION OF STATUTORY CAPITAL.—ACCOUNTING PERIODS.

Dr.

Cr.

	31st Oct., 1913.	31st Oct., 1914.	31st Oct., 1915.	31st Oct., 1916.		31st Oct., 1913.	31st Oct., 1914.	31st Oct., 1915.	31st Oct., 1916.
To Investments ...	£ 121,000	£ 106,000	£ 146,000	£ 160,000	By Assets, as per Balance Sheet	£ 336,000	£ 313,000	£ 350,000	£ 343,000
" Sundry Creditors ...	10,800	3,000	10,000	12,000	" Depreciation written off ...	7,000	1,000	1,500	1,000
" Bills Payable ...	2,700	1,700	13,000	2,500	" Investments (War Loan, Treasury Bills, &c.) treated as Capital ...	—	—	20,000	20,000
" Wear and Tear allowed ...	5,300	2,500	2,500	13,000	" Income Tax Reserve in Sundry Creditors ...	1,500	2,000	4,000	5,000
" Proportion of Final Dividends paid in 1914 ...	8,000	—	—	—					
" Proportion of Final Dividends paid in 1915 ...	—	3,000	—	—					
" Proportion of Final Dividends paid in 1916 ...	—	—	2,000	—					
" Proportion of Final Dividends paid in 1917 ...	—	—	—	8,000					
Balance, being Statutory Capital	196,700	198,800	199,500	183,000					
	<u>£344,500</u>	<u>£323,000</u>	<u>£388,500</u>	<u>£378,500</u>		<u>£344,500</u>	<u>£323,000</u>	<u>£388,500</u>	<u>£378,500</u>
Statutory Capital	£ 114,650	£ 198,800	£ 199,500	£ 183,000					
Pre-War Capital ...	114,650	114,650	114,650	114,650					
Increase ...	82,050	84,150	84,850	68,350					
Rate of Allowance ...	6 %	6 %	6 %	9 %					
Allowance ...	<u>£4,923</u>	<u>£5,049</u>	<u>£5,091</u>	<u>£6,151</u>					

COMPUTATION OF LIABILITY.

	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Profit Year to 31st Oct., 1914	20,000	0	0									
Less—Allowance for Increased Capital	4,923	0	0	15,077	0	0						
Less—Pre-War Standard	24,350	0	0									
Margin	200	0	0	24,550	0	0						
Deficiency				9,473	0	0						
Set off at 50 %							4,736	10	0			
Profit Year to 31st Oct., 1915	28,900	0	0									
Less—Allowance for Increased Capital	5,049	0	0	23,851	0	0						
Less—Pre-War Standard	24,350	0	0									
Margin	200	0	0	24,550	0	0						
Deficiency				699	0	0						
Set off at 60 %							419	8	0			
Total Set off							£5,155	18	0			
Profit Year to 31st Oct., 1916	41,500	0	0									
Less—Allowance for Increased Capital	5,091	0	0	36,409	0	0						
Less—Pre-War Standard	24,350	0	0									
Margin	200	0	0	24,550	0	0						
Excess				11,859	0	0						
Duty at 60 %										7,115	8	0
Less Set off										5,155	18	0
Net Duty Payable...										1,959	10	0
Profit Year to 31st Oct., 1917	53,000	0	0									
Less—Allowance for Increased Capital	6,151	0	0	46,849	0	0						
Less—Pre-War Standard	24,350	0	0									
Margin	200	0	0	24,550	0	0						
Excess				£22,299	0	0						
Duty at 76½ %										17,095	18	0
Total Duty Payable										£19,055	8	0

Notes to Illustration.

(1) DEPRECIATION.

The actual Depreciation written off in the books must be added back and the Wear and Tear allowed on the basis of that admitted for Income Tax purposes should

be deducted. In the Capital Computations the accumulated amounts written off by the Company should be added back to the assets and the accumulated amounts of Wear and Tear allowed deducted.

(2) INVESTMENTS.

The Investments in the Pre-War years must all be excluded and the Income thereon. In the Accounting Periods further Investments were made in War Loan and Treasury Bills. These have also been excluded in the first instance but it will be observed that in computing the Capital as at 31st October, 1915 and 1916 respectively, the sum of £20,000, representing a portion of the War Investments, has been claimed to be treated as Capital. The corresponding income therein has consequently been brought into account.

It will be noticed that in the year 1915, £900 has been written back in respect of income under this heading, although the War Securities are only included as at 31st October, 1915, and therefore only come into account for Computation of Capital for the year ending 31st October, 1916. Notwithstanding this, all income received prior to that date in respect of such Securities claimed to be treated as Capital must be brought into account.

Similarly where War Securities are excluded as Investments at the date of any Balance Sheet, the income received in the previous year in respect thereof should also be excluded when computing the profit for that year.

(3) INCOME TAX RESERVE.

Included in Sundry Creditors each year was an amount representing Reserve for Income Tax. These amounts are not liabilities at the date of the Balance Sheet and therefore can be treated as Capital. Had the Balance Sheets been dated 31st December, however, the Income Tax due on 1st January following would have to be treated as a liability.

(4) APPORTIONMENT OF FINAL DIVIDENDS.

These dividends have been apportioned according to the dates paid, being only treated as a *pro rata* deduction from the date of payment.

(5) ACCOUNTING PERIOD PROFIT.

The Profit for any Accounting Period is the profit after making an adjustment for Increased or Decreased Capital. This is important when a claim arises under § 26 (4), 1917.

§ 8.—Computation of Liability of a Firm.

The following is an Illustration of the Computation of the Liability of a Firm to Excess Profits Duty :—

Illustration.

PRE-WAR PERIODS.

PROFIT AND LOSS ADJUSTMENT ACCOUNTS

Dr. FOR THE THREE YEARS ENDING 31ST DECEMBER, 1913. *Cr.*

	1911	1912.	1913.		1911.	1912.	1913.
	£	£	£		£	£	£
To Interest on Investments ...	100	150	120	By Profit, as per P. & L. A/cs...	14,547	13,820	12,327
„ Balance, Statutory Profit ...	21,715	20,798	20,304	„ Partner's Salary ...	700	700	900
				„ Income Tax ...	1,058	1,235	1,301
				„ Interest on Capital, less on Drawings ...	5,160	5,193	5,876
				„ Depreciation on Investments ...	300	—	—
				„ Charitable Donations ...	50	—	20
	<u>£21,815</u>	<u>£20,948</u>	<u>£20,424</u>		<u>£21,815</u>	<u>£20,948</u>	<u>£20,424</u>

PRE-WAR STANDARD.

Profit, 1911...	£21,715
„ 1913...	20,304
				<u>2)42,019</u>
				<u>£21,010</u>

COMPUTATION OF CAPITAL, PRE-WAR PERIODS,

Dr. AT 31ST DECEMBER. *Cr.*

	1910.	1911.	1912.		1910.	1911.	1912.
	£	£	£		£	£	£
To Creditors ...	35,594	19,597	25,430	By Assets, as per Balance Sheet ...	146,539	134,148	127,154
„ Investments ...	2,000	1,700	1,700				
„ Balance—Statutory Capital ...	108,945	112,851	100,024				
	<u>£146,539</u>	<u>£134,148</u>	<u>£127,154</u>		<u>£146,539</u>	<u>£134,148</u>	<u>£127,154</u>

PRE-WAR CAPITAL

At 31st December, 1910	£108,945
„ 1912	100,024
			<u>2)208,969</u>
			<u>£104,485</u>

ACCOUNTING PERIODS.

Dr. PROFIT AND LOSS ADJUSTMENT ACCOUNTS FOR THE FOUR YEARS ENDING 31ST DECEMBER, 1917. Cr.

	1914.	1915.	1916.	1917.		1914.	1915.	1916.	1917.
	£	£	£	£		£	£	£	£
To Interest on Investments ...	—	300	400	350	By Profit, as per Profit and Loss Accounts ...	10,402	27,227	26,863	4,378
" Balance—Statutory Profit ...	18,854	36,372	41,562	24,017	" Partner's Salary ...	900	900	900	900
					" Income Tax ...	1,380	2,035	—	—
					" Interest on Capital, <i>less</i> on Drawings ...	6,172	6,510	8,029	8,550
					" Excess Profits Duty ...	—	—	5,670	10,239
					" Donations ...	—	—	500	300
	£18,854	£36,672	£41,962	£24,367		£18,854	£36,672	£41,962	£24,367

Dr.

COMPUTATION OF CAPITAL, ACCOUNTING PERIODS AT 31ST DECEMBER.

Cr.

	1913.	1914.	1915.	1916.		1913.	1914.	1915.	1916.
	£	£	£	£		£	£	£	£
To Creditors ...	54,357	40,600	46,640	92,426	By Assets, as per Balance Sheet	190,543	175,337	199,780	269,112
" Investments ...	1,700	1,700	1,700	1,700		£190,543	£175,337	£199,780	£269,112
" Balance — Statutory Capital	134,486	133,037	151,440	174,986					
	£190,543	£175,337	£199,780	£269,112					
Capital Employed ...	134,486	133,037	151,440	174,986					
<i>Less</i> Pre-War Capital	104,485	104,485	104,485	104,485					
Increase ...	£30,001	£28,552	£46,955	£70,501					
Rate ...	7 %	7 %	7 %	11 %					
Allowance ...	£2,100	£1,999	£3,287	£7,755					

DUTY PAYABLE.

	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Profit, 1914	18,854	0	0									
Less—Allowance for Capital...	2,100	0	0									
	21,010	0	0	16,754	0	0						
Less—Pre-War Standard Margin	200	0	0									
				21,210	0	0						
Deficiency at 50 %...				£4,456	0	0	2,228	0	0			
Profit, 1915	36,372	0	0									
Less—Allowance for Capital...	1,999	0	0									
	21,010	0	0	34,373	0	0						
Less—Pre-War Standard Margin	200	0	0									
				21,210	0	0						
Excess at 60 % ...				£13,163	0	0				7,897	16	0
Profit, 1916	41,562	0	0									
Less—Allowance for Capital...	3,287	0	0									
	21,010	0	0	38,275	0	0						
Less—Pre-War Standard Margin	200	0	0									
				21,210	0	0						
Excess at 60 % ...				£17,065	0	0				10,239	0	0
Profit, 1917	24,017	0	0									
Less—Allowance for Capital...	7,755	0	0									
	21,010	0	0	16,262	0	0						
Less—Pre-War Standard Margin	200	0	0									
				21,210	0	0						
Deficiency at 80 % ...				£4,948	0	0	3,958	8	0			
							£6,186	8	0	18,136	16	0
Less—Set-off ...										6,186	8	0
Total Net Duty Payable ...										£11,950	8	0

Notes to Illustration.

(1) PRE-WAR STANDARD.

It will be observed that the Profits of the years 1911 and 1913 have been selected as the basis of the Profits Standard, although the Profits of the year 1912 are greater than those of the year 1913. The reason for this is, that the Capital employed in 1913 is considerably lower than in the other years, and the difference between the Profits Standard as taken and that based on the Profits of 1911 and 1912 is less than the Statutory Percentage on the difference between the corresponding averages of Capital employed, as follows:—

Profits—1911	£21,715
1912	20,798
	2)42,513
Profits Standard	21,257
Profits Standard as per Illustration	21,010
	<u>247</u>
Increase in Profits Standard ..	£247

The Pre-War Average Capital on this basis would be as follows :—

Capital at 31st December, 1910 ..	£108,945
" " 1911 ..	112,851
	<u>2)221,796</u>
Average Pre-War Capital	110,898
<i>Less</i> Average Pre-War Capital	
as per Illustration ..	104,485
	<u> </u>
Increase in Pre-War Capital ..	£6,413
	<u> </u>
7 per cent. thereon	449
<i>Less</i> Increase in Pre-War	
Standard ..	247
	<u> </u>
Balance ..	£202
	<u> </u>

This balance is the annual amount in favour of the Taxpayer by selecting the years 1911 and 1913 as the basis of the Profits Standard in place of the years 1911 and 1912 for the first three Accounting Periods and increases to £458 thereafter. Over four Accounting Periods this would make a difference in Duty payable of £710, which is well worth obtaining. The difference is comparatively small in this case, but in practice it will often be found that the difference is very material and the point therefore requires careful consideration.

(2) PARTNER'S SALARY.

This must be written back as it is regarded as an appropriation of Profits.

(3) INCOME TAX.

Up to and including the year 1915 the Income Tax in this case was charged against the Profit and Loss Account, but in the last two years Income Tax was charged against the Partners' Drawing Accounts, and therefore no sum is written back in those years.

(4) INTEREST ON CAPITAL.

This is an appropriation of Profits and must be written back, and Interest on Drawings must be dealt with in the same way, as this is merely an adjustment between the Partners.

(5) INVESTMENT ACCOUNTS.

These Investment Accounts must not be treated as Capital employed, being ordinary Investments, while on the other hand Income thereon must be eliminated. No Income was received in the year 1914. Similarly any depreciation on such Investments must be written back or any loss or profits on sale.

(6) DEFICIENCIES.

Deficiencies in any Accounting Period are calculated at the same rate as the Duty payable for such period would be calculated. The Deficiency for 1914 will be set off against the Excess Profits Duty payable for 1915, while the Deficiency for 1917 will be claimed by way of repayment.

SYNOPSIS OF CHAPTER V.

Controlled Establishments.

§ 1.—MUNITIONS OF WAR ACTS, 1915 & 1916, AND FINANCE ACT, 1917.

2.—STANDARD AMOUNT OF PROFITS.

3.—CONTROLLED PERIOD.

4.—FORM OF RETURN.

(a) Trades or Businesses.

(b) Adjustment of Profits.

(c) Stock, Work in Progress, &c.

(d) Claims under Rule 9 of the Munitions Rules, 1915.

(e) Claims in respect of Increased Capital or Output.

(f) Repairs, Renewals, Capital Expenditure, &c.

(g) Reserves.

(h) Grants, Loans and Advances by Government Departments.

(i) Pooling Arrangements, Trade Associations, &c.

(j) Increases in Remuneration.

(k & l) Miscellaneous.

CHAPTER V.

CONTROLLED ESTABLISHMENTS.**§ 1.—Munitions of War Acts, 1915 & 1916, and Finance Act, 1917.**

Up to the 31st day of December, 1916, Controlled Establishments were subject to limitation of profits under the Munitions of War Act, 1915, and the Munitions of War (Amendment) Act, 1916, in accordance with the rules made thereunder which were entitled The Munitions (Limitation of Profits) Rules, 1915.

The appropriate Sections of the Acts and Rules will be found in the Appendix.

Under § 24 of the Finance Act, 1917, the limitation of profits under the Munitions of War Act, 1915, shall not apply to any Profits arising after the 31st December, 1916, or apportioned to the period after that date, and as from the 1st January, 1917, Controlled Establishments will be subject only to Excess Profits Duty, and the Munitions Levy ceases.

The Assessment and Collection of Munitions Exchequer Payments arising on or before the 31st day of December, 1916, is to be made by the Commissioners of Inland Revenue and to be computed by them in accordance with the provisions of the Munitions Act, 1915, and the Rules made thereunder, and the Commissioners shall for those purposes have all the powers of the Minister of Munitions including the power of making Rules (§ 24, 1917).

Rules have been made by the Commissioners entitled The Munitions Exchequer Payment Rules, 1917, for the purpose of carrying these arrangements into effect. These Rules will be found in the Appendix.

The position of Controlled Establishments is therefore as follows :—

- (1) They are liable to Excess Profits Duty in the ordinary way in respect of any Accounting Period, subject to the Duty prior to the period of control.
- (2) They are liable to limitation of profits in respect of the Period of Control up to the 31st December, 1916, and to payment of Excess Profits Duty, should the amount payable as such be found to be in excess of the amount payable under the Munitions of War Act, 1915.
- (3) As from the 1st January, 1917, they are liable to Excess Profits Duty only.

Although therefore the limitation of profits under the Munitions Act ceases as from 31st December, 1916, and Controlled Establishments are from that date only subject to Excess Profits Duty, it is desirable to point out the principal provisions for the Assessment and Collection of Munitions Exchequer Payments as the Assessment on these will not in any case be complete for some little time.

The net Profits of a Controlled Establishment up to 31st December, 1916, shall be ascertained in accordance with the provisions of § 5 of the Munitions of War Act, 1915, and the Rules made thereunder, and the amount payable to the Exchequer shall be taken to be the amount of Profits exceeding by one-fifth the Standard Amount of Profit, subject to any adjustments under Rules 9 and 10 of the Munitions Rules, 1915.

Apart from any adjustments of this nature the following Illustration shows how the divisible Profits are arrived at and the amount payable to the Exchequer, assuming the period of Assessment to be one year :—

Illustration.

Standard Amount of Profits	£20,000
Profits for Period of Assessment.. . .	30,000
<hr/>	
Standard Amount of Profits.. . . .	20,000
Add One-fifth	4,000
<hr/>	
Divisible Profits	24,000
Profits for Period of Assessment.. . .	30,000
<hr/>	
Amount payable to Exchequer	<u>£6,000</u>

§ 2.—Standard Amount of Profits.

The Standard Amount of Profits will have been fixed in most cases, the Statutory basis being the average of the Profits of the two financial years completed before the outbreak of War, but where the Standard has not been settled and the basis under the Act affords an unfair Standard of comparison, or no Standard, application should be made for an alternative Standard. No general lines have been fixed as the basis for such an alternative Standard, as the individual circumstances of the Controlled Establishment in question are the determining factors, but special regard should be paid to depression of Trade in Pre-War Years, productive capacity of the Establishment in excess of Pre-War requirements, and any other conditions which tended to depress the Profits of the Standard Period.

§ 3.—Controlled Period.

With the transfer of the Administration of Munitions Exchequer Payments to the Board of Inland

Revenue, some changes of procedure have been effected and the form of return for the purpose of Munitions Exchequer Payments has been altered.

The following remarks deal with the particulars required to be stated on the return and indicate the points of difficulty that are likely to arise.

§ 4.—Form of Return.

(a) Trades or Businesses.

This contains particulars of the Trade or Business, and the nature thereof. The description of the Trade should be such as to indicate any variation in the business as compared with that carried on in the Standard Period.

(b) Adjustment of Profits.

This Section shows a statement of the Net Profits as shown by the audited accounts, together with a statement of special items debited or credited in arriving at the same. The accounts to be rendered should be exact copies of the originals prepared for the Owner's own purposes. If such accounts are prepared for a period of less than one year, the accounts of such shorter periods are required for the purpose of the Levy. It should be noted that *Audited Accounts* are asked for specifically. The Profit to be stated is the amount earned in the Period before the distribution of any portion as dividend or for any other purpose.

The following are the special items debited or credited in arriving at the net profits that are required to be specified :—

- (1) *Income Tax (Schedules A, B and D).*
- (2) *Munitions Exchequer Payments.*

(3) *Excess Profits Duty.*

The net amounts actually debited in the accounts of the Period should be stated.

(4) *Interest debited, of every description.*

The separate items making up the total figure returned should be carefully entered to ensure that the corresponding Capital items are properly treated for the purpose of the claim for Increased Capital under § 4 (e).

(5) *Commissions, Bonuses, or other emoluments dependent upon profits, and payable to persons engaged in the management or direction of the undertaking.*

These particulars should be reconciled with those required under § 4 (j) dealing with increases in remuneration. Under § 24 (4) of the Finance Act, 1917, it is provided that Sub-Sections (2) and (3) of § 49 of the Finance Act, 1916, which relate to the recovery of Excess Profits Duty paid in respect of Increased Directors' Fees disallowed, shall apply for the purpose of Munitions Exchequer payments as they apply for the purpose of Excess Profits duty. Any sums disallowed therefore under this heading will be recoverable from the recipients of the additional remuneration.

(6) *Salaries or other emoluments of the proprietor or partners (in cases of private firms).*(7) *Reserves or special "provisions" of every description made during the financial year or period.*

The amount under this heading should agree with the particulars required under § 4 (g).

Where the sum returned includes additions to reserves for Bad Debts or Discounts made on the same basis as that agreed in the Standard Period, a note should be made that allowance is claimed in respect of these sums.

- (8) *Capital Expenditure (including alterations) debited to Revenue.*

This may be an important item where considerable capital expenditure for War purposes has arisen, or has been incurred and charged to Revenue. Materials and Labour for the erection of temporary Buildings may easily have been included in Purchases and Wages respectively. These should be analyzed as otherwise the prime cost of the asset affected will be too low, and would be apparent should the Survey Department subsequently make an inspection for the purposes of fixing an allowance for Special Depreciation under Schedule D.

- (9) *Depreciation charged at rates exceeding those allowed in calculating Standard Profits—Amount of Excess.*

Careful note should be taken of items included under this heading in order to ensure that any allowance in respect of the assets is duly claimed under § 4 (d).

- (10) *Allowances to Employees serving in H.M. Forces, and their dependants.*

While it is clear what is required here, it does not follow that the amount stated will be added to the Profits in computing the amount of Levy payable. A statement should be annexed showing how the amount returned is

made up and claiming that at least the amount paid to *bonâ fide* employees should be allowed.

(11) *Subscriptions and Donations.*

(12) *Other Subscriptions and Donations.*

Any items claimed as allowable should be distinguished; these include subscriptions to Local Hospitals, &c.

(13) *Debits in respect of Assets not employed in the Controlled Establishment, and other Special Debits (to be specified).*

Charges in respect of Property sub-let to tenants or depreciation of investments which are not regarded as Capital employed are the most usual and are disallowed.

(14) *Interest credited of every description.*

(15) *Credits in respect of Assets not employed in the Controlled Establishment, and other Special Credits (to be specified).*

This is a contra item to No. 13, and therefore falls to be eliminated.

c) Stock, Work in Progress, &c.

If there has been any variation in the basis or method of valuation or stock-taking in respect of Stock-in-trade, Work-in-Progress, Loose Tools, Stores or other assets, the valuation of which has affected the profits of the Period, a statement must be made showing the basis or method adopted at the close of the Financial Year or Period.

(d) Claims under Rule 9 of the Munitions Rules, 1915.

Where claims are made under this Rule, the amounts claimed should be shown under the appropriate head-

ings and full particulars in support thereof should be given.

Under Rule 9 Claims for Special Allowances can be made on the following grounds :—

- (a) *Exceptional Wear and Tear of Plant, Buildings and Machinery.*

Generally speaking claims under this sub-rule relate to the ordinary Fixed Assets of the Establishment as apart from Assets specially acquired for War purposes. Where Plant, Buildings, and other Assets have been subjected to abnormal strain during the Controlled Period either owing to longer working hours, or to producing articles heavier or of a different nature from those for which the Plant was originally designed, or to deferment of repairs and renewals, or from any other cause, a statement of the circumstances should be prepared making comparisons wherever possible with the conditions of the Standard Period. Above all it is essential that the accounts prepared for the Proprietors should show a provision at least equal to the allowance claimed for the purposes of the Levy.

- (b) *Capital Expenditure specially incurred for the purpose of Munitions work.*
- (c) *The depreciation in value of Assets acquired for Munitions purposes.*

The only difference between the claims under these two sub-rules seems to be that the former contemplates an allowance in respect of Capital not expended in acquiring material assets, while the latter covers all cases where material

assets were acquired. The procedure to be adopted is the same in both cases and consists in the preparation of Schedule of the Expenditure under appropriate headings since the commencement of the same, together with reconciliations at the date of each Balance Sheet with the valuation as shown therein. As regards the material assets such as Buildings, Sheds, Plant, &c., the Survey Department will probably also require a plan to be prepared so that on inspection it will be possible for the official valuer to identify readily any particular building in the plan and in the Schedule.

(d) *Special provisions or terms of any Contracts entered into with the Government.*

Any allowances under this head obviously depend entirely on the terms of the contracts in each individual case, and the only precaution necessary is to bring these clearly before the Board before the assessment is finally agreed.

(e) *Exceptional services rendered by the Controlled Owner.*

This clause is of particular value where the Proprietor has wide technical knowledge and experience which has been utilized for Munitions purposes. The additional services should be detailed and supported where possible by correspondence with the Government Departments concerned. The allowance claimed should be stated.

(f) *Any increased or additional emoluments of Managers and Others.*

Any sums paid in excess of the emoluments paid in the Standard Period should be justified

by a comparison of the services rendered, if agreements have not already been arrived at with the Ministry of Munitions.

- (g) *Any other matters material to be taken into account.*

Whether any claim can be made under this sweeping clause is a matter that can only be determined with a knowledge of the circumstances of each case, but as an example of matters deemed to be relevant, a claim could be established that the capacity of the establishment was in excess of Pre-War requirements and so afforded scope for expansion to meet the needs of the Controlled Period.

(e) Claims in respect of increased Capital or Output.

This Section deals with Claims in respect of Increased Capital and Increased Output, and it should be noted that the allowances under these headings are alternative. Where it is not clear which is most advantageous it will be sufficient to give notification of intention to claim, leaving the basis to be settled subsequently :—

(1) *Claim in respect of Increased Capital.*

Capital for the purposes of the Munitions Exchequer payments is computed on lines similar to those used in arriving at the Statutory Capital for Excess Profits Duty, the exceptions being that the values of some of the assets may be different owing to differences in the depreciations allowed for the two duties; further, as interest is added to profits for Munitions Levy purposes, the Loans must not

be deducted in arriving at the Capital. On the other hand as interest received is eliminated, the corresponding Capital sums need not be taken into account. Assets not employed in the Controlled Establishment must, of course, be omitted. The allowance on the additional Capital employed is at the rate of 8 per cent.

(2) *Claim in respect of Increased Output.*

A separate form is supplied showing the particulars to be furnished in support of this claim. Where the articles produced in the Controlled Period are of the same nature as those produced in the Standard Period, it is possible to get a direct comparison of quantities produced. The amount of the Sales also affords a comparison if the increase of the selling price per article is allowed for. In all cases it is possible to base an estimate on the productive wages after allowing for the increase in the rates of pay, and this can be further checked by reference to the average number of employees in the Controlled and the Standard Periods. When the increased output has been calculated from the available data, a fixed percentage is taken and applied to the Standard Profits, giving the amount of the normal allowance.

(f) **Repairs, Renewals, Capital Expenditure, &c.**

(1) *Repairs, Renewals, &c.*

Particulars must be given of the total amounts (including Wages) expended on the Repairs and Renewals in each Year or Period since the commencement of the Standard

Period, except that particulars previously given need not be duplicated.

Where no separate accounts for Repairs and Renewals have been kept an estimate should be furnished.

(2) *Capital Expenditure, Depreciation, &c.*

Particulars must be given here of the Capital Expenditure and Depreciation thereon included in the accounts under review, distinguishing between Expenditure which is the subject of special writing-off agreements under Rule 9, and other items not subject to any such agreement. Particulars should of course be in accordance with the special claims made under § 4 (d).

(g) **Reserves.**

Particulars must be given of all Reserves (whether general or specific) of the undertaking.

(h) **Grants, Loans and Advances by Government Departments.**

Particulars must be given of the amounts and terms of all Grants, Loans and Advances received from Government Departments from the 4th August, 1914, to the close of the Financial Year or Period under review, and it should be stated how such amounts and any repayments thereon have been dealt with in the accounts.

(i) **Pooling Arrangements, Trade Associations, Federations, Combines, &c.**

Particulars must be given of any transactions involving Pooling Arrangements since the commencement of the Standard Period, and further information is required where the Controlled Owner is a Member of any Trade Association, Federation, or Combine.

(j) Increases in Remuneration.

Particulars must be given of each case where the remuneration (by way of Salary, Commission, or other Emoluments) of any Director, Manager, Employee, or other person exceeds the average amount of such remuneration for the Standard Period by more than 10 per cent. per annum, but this need not be given where the total amount of the Individual does not exceed £250 per annum. In the case of remuneration paid to persons holding a proprietary or controlling interest in the Establishment, all increases above the average remuneration for the Standard Period should be included irrespective of the limits mentioned above. A note should be made of increases that have been sanctioned by the Ministry of Munitions.

(k & l) Miscellaneous.

These Sections are of a general character, the former referring to variations in preparing accounts and other matters requiring explanation not already referred to in the previous part of the Return; while the latter requires particulars of Controlling interests held in other businesses.

APPENDIX.

THE FINANCE (No. 2) ACT, 1915.

PART III.

EXCESS PROFITS DUTY.

Charge of Excess Profits Duty.

38.—(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this Part of this Act applies, in any accounting period which ended after the 4th day of August, 1914, and before the 1st day of July, 1915, exceeded, by more than £200, the pre-war standard of profits as defined for the purposes of this Part of this Act, a duty (in this Act referred to as “excess profits duty”) of an amount equal to 50 per cent. of that excess.

(2) For the purposes of this Part of this Act the accounting period shall be taken to be the period for which the accounts of the trade or business have been made up, and where the accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up, shall be taken to be such period not being less than six months or more than a year ending on such a date as the Commissioners of Inland Revenue may determine.

Where any accounting period is a period of less than a year this section shall have effect as if there were substituted for £200 a proportionately reduced amount.

(3) Where a person proves that in any accounting period, which ended after the 4th day of August, 1914, his profits have not reached the point which involves liability to excess profits duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as excess profits duty in respect of any previous accounting period, or to set off against any excess profits duty payable by him in respect of any succeeding accounting period, such an amount as will make the total amount of excess profits duty paid by him during the whole period accord with his profits or losses during that period.

Trades and Businesses to which Excess Profits Duty applies.

39. The trades and businesses to which this Part of this Act applies are all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, excepting—

- (a) husbandry in the United Kingdom; and
- (b) offices or employments; and
- (c) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount,

but including the business of any person taking commissions in respect of any transactions or services rendered, and of any agent of any description (not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency).

Determination of Profits and Pre-War Standard.

40.—(1) The profits arising from any trade or business to which this Part of this Act applies shall be separately determined for the purpose of this Part of this Act, but shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of income tax, subject to the modifications set out in the First Part of the Fourth Schedule to this Act and to any other provisions of this Act.

(2) The pre-war standard of profits for the purposes of this Part of this Act shall, subject to the provisions of this Act, be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last pre-war trade years, to be selected by the taxpayer (in this Part of this Act referred to as the profits standard): Provided that if it is shown to the satisfaction of the Commissioners of Inland Revenue that that amount was less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard.

The percentage standard shall, for the purposes of this Part of this Act, be taken to be an amount equal to the statutory percentage on the capital of the trade or business as existing at the end of the last pre-war trade year, subject, however, to the provisions of this Act as to any alteration in the manner of calculating the percentage standard in special cases.

The statutory percentage shall be six per cent. in the case of a trade or business carried on or owned by a company or other body corporate, and seven per cent. in the case of any other trade or business, subject, however, to the provisions of this Act as to the increase in that percentage in certain cases.

The provisions contained in the Second Part of the Fourth Schedule to this Act shall have effect with respect to the computation of the profits of a pre-war trade year, and the provisions contained in the Third Part of the Fourth Schedule shall have effect with respect to the ascertainment of capital for the purposes of this Part of this Act.

“The last pre-war trade year” means the year ending at the end of the last accounting period before the 5th day of August, 1914, and “the three last pre-war trade years” means the three years ending at the three corresponding times

(3) Where it appears to the Commissioners of Inland Revenue, on the application of a taxpayer in any particular case, that any provisions of the Fourth Schedule to this Act should be modified in his case, owing to a change in the constitution of a partnership, or to the postponement or suspension, as a consequence of the present war, of renewals or repairs, or to exceptional depreciation or obsolescence of assets employed in the trade or business due to the present war, or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war, or to any other special circumstances specified in regulations made by the Treasury, those Commissioners shall have power to allow such modifications of any of the provisions of that schedule as they think necessary in order to meet the particular case.

If the Commissioners refuse, on any such application, to allow any modification, or if the applicant is dissatisfied with any modification allowed, the applicant may require the Commissioners to refer the case to a Board of Referees, to be appointed for the purposes of this Part of this Act by the Treasury, and that Board shall consider any case so referred and have the same powers with respect thereto as the Commissioners have.

Adjustments for Increased or Decreased Capital.

41.—(1) Where capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been increased, for the whole accounting period if the increased capital has been employed for the whole accounting period, and if the increased capital has been employed for part only of the accounting period, for that part of the accounting period.

(2) Where capital has been decreased during the accounting period, an addition shall be made to the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been so decreased, for the whole accounting period, if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period.

(3) For the purposes of this section capital shall be taken to be increased or decreased, as the case may be, where the pre-war standard of profits is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated.

(4) Where any capital employed in a trade or business which was so employed for the first time within three years before the 1st day of August, 1914, has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage, or where interest has been earned on the capital, but at a rate less than the statutory percentage, an amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard.

Reference to the Board of Referees of Questions as to Increase of Percentages, &c.

42. Where an application is made to the Commissioners of Inland Revenue—

(1) For an increase of the statutory percentage as respects any class of trade or business, or for a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is, owing to the nature of the trade or business, small compared with the capital necessarily at stake for that trade or business, by reference to some factor other than the capital of the trade or business or to some additional factor ; or

(2) For an alteration of the pre-war standard of profits as respects capital employed for the purpose of the manufacture of war materials or for munitions work and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes ;

the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the case to a Board of Referees

to be appointed for the purpose of this Part of this Act by the Treasury, and that Board shall deal with the case, and may, by order, if they think fit, increase the statutory percentage or alter the percentage standard for the class of trade or business the subject of the order, or alter the pre-war standard of profits, as the case requires.

On any such order being made, this Part of this Act shall have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by this Act; and where, in pursuance of any such order, the statutory percentage is increased or the percentage standard is altered as respects any class of trade or business, the statutory percentage shall be increased and the percentage standard shall be altered respectively for all purposes of this Part of this Act as respects any trade or business belonging to that class.

This section shall apply to any sub-division of a trade or business based either on any special feature of the trade or business or on locality as it applies to a class of trade or business, in any case where the Board of Referees are of opinion that the sub-division can properly be dealt with separately.

Excess Mineral Rights Duty.

43.—(1) Where the amount payable to any person as rent in respect of the right to work minerals or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of any trade or business) varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present war (in this section referred to as the accounting year) exceeds the pre-war standard of that rent, there shall be paid as an addition to any mineral rights duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by that person (in this section referred to as the person liable) an amount equal to fifty per cent. of that excess.

(2) The pre-war standard of rent shall, for the purposes of this section, be taken to be the average of any two of the three last pre-war rent values, to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war rent values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, shall be taken to be such amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circumstances, subject nevertheless to the same appeal as that to which the assessment of duty by the Commissioners is subject under Part I. of the Finance (1909-10) Act, 1910.

The pre-war rent value shall, as respects each of the three years immediately preceding the first accounting year, be taken to be the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year.

(3) Any amount payable in any accounting year by the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves, shall be treated as a deduction from the amount payable to the lessee as rent for that year, and in computing the pre-war rent values a corresponding deduction shall be made on account of any such rent.

(4) Any increment value duty payable annually under sec. 22 of the Finance (1909-10) Act, 1910, shall, when paid, be treated as a deduction from the rent payable to any person in the year in which the duty is paid, and a corresponding deduction shall be made in computing the pre-war standard with which the rent for that year is to be compared.

(5) Any duty payable under this section shall be assessed by the Commissioners of Inland Revenue on the person liable, subject to the same appeal as that to which an assessment of duty by the Commissioners under Part I. of the Finance (1909-10) Act, 1910, is subject, and shall be recoverable as a debt due to His Majesty from that person.

(6) Sub-sec. (3) of sec. 20 of the Finance (1909-10) Act, 1910, shall extend so as to authorise particulars to be required of any lease of minerals or wayleaves and as to the sums paid or payable thereunder, and of such other particulars as to the minerals or wayleaves as the Commissioners may require for the purpose of this section.

(7) Expressions to which a special meaning is attached by Part I. of the Finance (1909-10) Act, 1910, shall have the same meaning in this section.

Returns for Purpose of Part III., and Penalty for Fictitious Transactions.

44.—(1) The Commissioners of Inland Revenue may, for the purposes of this Part of this Act, require any person engaged in any trade or business to which this Part of this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require.

(2) It shall be the duty of every person chargeable to excess profits duty under this Part of this Act to give notice that he is chargeable to the Commissioners of Inland Revenue before the

31st day of January, 1916, and it shall be the duty of the liquidator of every company which is being wound up at the time of the commencement of this Act or is wound up after the commencement of this Act, and is chargeable to excess profits duty, to give notice of the fact to the Commissioners of Inland Revenue.

If any person fails to furnish a proper return in accordance with this section or to comply with any requirement of the Commissioners under this section, or to give any notice required by this section, he shall be liable on summary conviction to a fine not exceeding £100 and to a further fine not exceeding £10 a day for every day during which the offence continues after conviction therefor.

(3) A person shall not, for the purpose of avoiding the payment of excess profits duty, enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation, and, if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation.

If any person acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding £100.

Supplemental Provisions as to Excess Profits Duty.

45.—(1) The excess profits duty shall be assessed by the Commissioners of Inland Revenue, and shall be payable at any time, not being less than two months, after it is assessed.

The Commissioners may, in any case where they think fit, allow the duty to be paid in instalments of such amount payable at such times as the Commissioners direct.

(2) The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person in carrying on the trade or business, or, where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased, and where there has been a change of ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date.

(3) The amount of duty payable shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

Any such amount shall if it is less than £50 be recoverable also summarily as a civil debt.

(4) Where a company is wound up after the commencement of this Act, and before the 1st day of July, 1916, and the company would be chargeable with excess profits duty if the provisions of this Act were continued and extended to accounting periods ending before the 1st day of July, 1916, it shall be the duty of the liquidator of the company to give notice to the Commissioners of Inland Revenue, and to set aside such sum out of the assets of the company as appears to the Commissioners of Inland Revenue to be sufficient to provide for any such excess profits duty as may become chargeable.

(5) Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this Part of this Act may (except in cases where a special right of appeal is given under this Part of this Act) appeal to the general Commissioners for the division in which he is assessed, or to the special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath.

The power under secs. 21 and 22 of the Income Tax Act, 1853, to require an appeal in Ireland to the special Commissioners to be reheard by the county court judge, or chairman of quarter sessions, or recorder, shall apply to an appeal in Ireland under this provision.

Sec. 59 of the Taxes Management Act, 1880 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any appeal to the general or special Commissioners under this section, or of the rehearing of any such appeal in Ireland, and in the case of a reference to the Board of Referees under this Part of this Act, as it applies in the case of appeals to the general or special Commissioners under the Income Tax Acts.

(6) The duty assessed by the Commissioners of Inland Revenue shall be payable notwithstanding any appeal under this section except in cases where the Commissioners of Inland Revenue direct to the contrary, but the Commissioners shall make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given.

(7) The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the excess profits duty and the hearing of appeals under this section, and may by those regulations apply and adapt any enactments relating to the assessment and collection of income tax, or the hearing of appeals as to income tax by the general or special Commissioners, which do not otherwise apply.

(8) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of excess profits duty shall be subject to the same obligations as to secrecy with respect to excess profits duty as those persons are subject

to with respect to income tax, and any oath taken by any such person as to secrecy with respect to income tax shall be deemed to extend also to secrecy with respect to excess profits duty.

Computation of Profits and Gains in Relation to Excess Profits Duty.

35.—(1) Where any person has paid excess profits duty under this Act the amount so paid shall be allowed as a deduction for the purpose of income tax in computing the profits and gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received repayment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received.

The payment of excess profits duty shall not be deemed to be a specific cause for the purposes of sec. 134 of the Income Tax Act, 1842.

(2) Where in any income tax year the profits or gains from which a deduction may be made under this section come into computation, but owing to the time at which the amount of excess profits duty became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which the income tax would have been reduced if effect has been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

FOURTH SCHEDULE.

PART I.—COMPUTATION OF PROFITS.

1. The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or an average of years shall not be followed.

2. The principle of the Income Tax Acts under which deductions are not allowed for interest on money borrowed for the purpose of the trade or business, or for rent, or royalties, or for other payments income tax on which is collected at the source (not being payments of dividends or payments for the distribution of profits), and under which profits or gains arising from lands, tenements, or hereditaments forming part of the assets of the trade or business are excluded shall not be followed.

3. Deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade

or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period.

4. Deductions shall not be allowed on account of the liability to pay, or the payment of, income tax or excess profits duty, but a deduction shall be allowed (if not otherwise allowed by means of the adoption of the principle of the Income Tax Acts) for any sum which has been paid in respect of the profits on account of any excess profits duty or similar duty imposed in any country outside the United Kingdom.

5. Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires, and no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act.

6. Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business or so much of that capital as under the general law a single shareholder can legally own, the provisions of Part III. of this Act as to excess profits duty and the pre-war standard of profits shall apply as if that other company were a branch of the first-named company, and the profits of the two companies shall not be separately assessed.

7. Where in the case of any trade or business—

- (a) the percentage standard is adopted as the pre-war standard of profits; and
- (b) the net result of the trade or business during the three last pre-war trade years has shown a loss; and
- (c) any part of the profits has been applied in extinction of that loss;

then in estimating the profits a deduction shall be allowed equal to the amount of profits so applied.

8. In estimating the profits no account shall be taken of income received from investments except in the case of life assurance businesses and businesses where the principal business consists of the making of investments. Where account is taken of any such income—

- (a) any variation in the value of any of those investments which appears to the Commissioners of Inland Revenue not to be due to a variation in profits shall also be taken into account ; and
- (b) where the income has been derived from profits in respect of which any payment or repayment of excess profits duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment of duty.

9. In computing the total profits of a local authority from any trades or businesses carried on by that authority the total amount which is required to be raised by them, out of the rates or otherwise, for sinking fund purposes in connection with those trades or businesses shall be allowed as a deduction.

10. In the case of societies registered under the Industrial and Provident Societies Acts the excess profits duty shall be charged on the sum by which the profits per member for the accounting period (including any surplus arising from transactions with members) exceed the like profits per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, multiplied by the number of members in the accounting period.

11. In the case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period there shall (unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regard to the extent to which the contract was performed in such periods.

PART II.—PRE-WAR STANDARD.

1. The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.

2. Where the accounting period for which the excess profits duty is to be assessed is less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.

3. Where it is shown to the satisfaction of the Commissioners of Inland Revenue in the case of any trade or business that the three last pre-war trade years have been years of abnormal depression, any four of the last six pre-war trade years may be substituted for the purposes of the pre-war standard of profits for any two of the three last pre-war trade years.

The three last pre-war trade years shall not be considered as years of abnormal depression unless the average profits of those years have been at least twenty-five per cent. lower than the average profits of the preceding three years.

4. Where owing to the recent commencement of a trade or business there have not been three pre-war trade years, but there have been two pre-war trade years, the pre-war standard of profits shall be taken to be the amount of the profits arising from the trade or business on the average of those two years or, at the option of the taxpayer, the profits arising from the trade or business during the last of those two years, and where there have not been two pre-war trade years, but there has been one pre-war trade year, the pre-war standard of profits shall be taken to be the profits arising from the trade or business during that year; and where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period.

Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment or profession of any sort, whether liable to excess profits duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same trade or business; but only to the extent to which the income from the former trade, business, office, employment or profession has been diminished.

5. Where since the commencement of the three last pre-war trade years a trade or business has changed ownership, the provisions of this Part of this Schedule shall apply as if a new trade or business had been commenced on the change of ownership, except in cases when the taxpayer makes an application that the provisions of Part III. of this Act and this Schedule should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) shall be made in the application of this Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.

6. It is hereby declared that, where any business or trade is confined to the management of any particular assets, but power exists to substitute other assets for those particular assets or any of them, such a substitution shall not be deemed, for the purposes of Part III. of this Act, to constitute a change of ownership of the business; but, where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets

purchased shall be estimated on the same basis for all the purposes of Part III. of this Act.

PART III.—CAPITAL.

1. The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

- (a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase-money; and
- (b) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and
- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this Part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2. Any capital the income on which is not taken into account for the purposes of Part I. of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III. of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets.

FINANCE ACT, 1916.

PART III.

EXCESS PROFITS DUTY.

Continuance and increase of rate of excess profits duty.

45.—(1) The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as “ the principal Act ”), shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of July, 1915, and before the 1st day of August, 1917, as it applies to accounting periods ended after the 4th day of August, 1914, and before the said 1st day of July.

(2) Sec. 38 of the principal Act shall, as respects excess profits arising in any accounting period beginning after the expiration of a year from the commencement of the first accounting period, have effect as if 60 per cent. of the excess were substituted as the rate of duty for 50 per cent. of the excess.

Where part of an accounting period is after and part before the date of the expiration of a year from the commencement of the first accounting period, the total excess profits and any deficiencies or losses arising in the accounting period shall be apportioned between the time up to and including, and the time after that date in proportion to the length of those times respectively, and the rate attributable to the time after and the time before and including that date shall respectively be 60 and 50 per cent. of the excess.

In the case of trades or businesses commencing after the 4th day of August, 1914, the rate of duty shall be 60 per cent. of the excess in respect of any accounting period ending after the 4th day of August, 1915.

In calculating any repayment or set off under sub-sec. (3) of sec. 38 of the principal Act any amount to be repaid or set off on account of a deficiency or loss arising in any period in respect of which duty would be payable at the rate of 50 per cent. of the excess, shall be calculated by reference to that rate of duty.

Any additional duty payable by virtue of this section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period.

(3) It shall be the duty of every person chargeable to excess profits duty under Part III. of the principal Act, as extended by this Act, if he has not previously given notice of his liability to be charged with excess profits duty in respect of any accounting period, to give notice to the Commissioners of Inland Revenue

before the expiration of two months after the termination of any accounting period in respect of which he is chargeable, or, if the accounting period terminated before the passing of this Act, within one month after the passing of this Act.

If any person fails to give the notice required by this provision he shall be liable on summary conviction to a fine not exceeding £100, and to a further fine not exceeding £10 a day for every day during which the offence continues after conviction therefor.

Increase of rate of excess mineral rights duty.

46.—(1) Sec. 43 of the principal Act (which relates to excess mineral rights duty) shall have effect as if 60 per cent. of the excess were substituted as the rate of duty for 50 per cent. of the excess, in the case of minerals which have become subject to a mining lease after the 4th day of August, 1914, for all accounting years, and in the case of other minerals for any accounting year ending after the completion of the first accounting year, and any additional duty may be recovered accordingly.

(2) It is hereby declared that the words in sub-sec. (1) of sec. 43 of the principal Act “assets of any trade or business” refer only to assets of the trade or business of the person receiving the rent for the right to work the minerals or for the mineral wayleaves.

Computation of excess profits duty in case of sale of ships.

47. Where any ship has been sold since the 4th day of August, 1914, in such circumstances that the profits of the sale are not the profits of a trade or business, the following special provisions shall, if the Commissioners of Inland Revenue so require, be applied in the computation of the liability to excess profits duty in respect of the profits arising from the use of the ship:—

- (a) The pre-war standard of profits of the purchaser as respects the ship shall, where the standard of the trade or business of the vendor is a profits standard, be calculated by reference to the profits arising from the use of the ship during the pre-war trade years, and shall be ascertained in accordance with the provisions of the principal Act, but calculated, where necessary, as if the use of the ship were a separate business; and where that standard is a percentage standard the pre-war standard of profits as respects the ship shall be the same as if the ship had not been sold, or, in the case of a ship which was used for the first time after the 4th day of August, 1914, shall be calculated by reference to the capital represented by the ship at the date when it was first used; and the pre-war standard of profits of the trade or business of the vendor and of the purchaser shall respectively be reduced and increased as the case may require, with any adjustments which may be necessary to meet the case of borrowed money or unpaid purchase-money or other similar matters:

- (b) For the purpose of estimating separately the profits arising from the use of the ship, an apportionment shall, where necessary, be made of the total profits of the trade or business in which the ship has been used, regard being had to the earnings of the ship as compared with the earnings of the other assets employed in the trade or business ;

Any appeal under sub-sec. (5) of sec. 45 of the principal Act, so far as it involves any question of an apportionment under this provision, shall be to the Special Commissioners ;

- (c) The power to require returns under sub-sec. (1) of sec. 44 of the principal Act shall include power for the Commissioners of Inland Revenue to require any vendor of the ship to give such information to them and to the purchaser as the Commissioners think necessary in order to enable the provisions of this section to be carried into effect ;
- (d) Nothing in sub-sec. (3) of sec. 40 of the principal Act or in paragraph 3 of Part I. of the Fourth Schedule to the principal Act shall operate so as to enable the purchaser of the ship to obtain any greater relief than could have been obtained by the vendor if the ship had not been sold, other than relief in connection with expenditure by the purchaser on improvements or repairs ;
- (e) In the application of sec. 41 of the principal Act to any trade or business whose pre-war standard of profits has been determined or adjusted under this section any increase or decrease of capital attributable to the purchase or sale of the ship shall be disregarded, and where any such determination or adjustment has taken place both in respect of the sale of a ship and the purchase of another ship for the same trade or business, paragraph 6 of Part II. of the Fourth Schedule to the principal Act shall not apply.

Adjustment of excess profits duty and munitions Exchequer payments in case of controlled establishments.

48.—(1) The Commissioners of Inland Revenue may treat any sums actually paid in respect of munitions Exchequer payments, which appear to the Commissioners to be attributable to the same period and subject matter as that for which excess profits duty is to be paid, as a payment on account of excess profits duty, or, if the amount of the munitions Exchequer payments is larger than the amount payable as excess profits duty, as extinguishing the duty for the purposes of collection ; and may arrange with the Minister of Munitions, if in any case excess profits duty is paid before the munitions Exchequer payment, for the deduction of excess profits duty payments from any sums to be collected in respect of munitions Exchequer payments which appear to the

Commissioners to be attributable to the same period and subject matter as that for which the excess profits duty payments have been made, or, if the amount of the excess profits duty payments is greater than the amount to be collected on account of munitions Exchequer payments, for the extinction of the amount to be so collected.

For the purpose of determining the period to which any profits are to be attributed under this section, profits shall be deemed to accrue from day to day at a uniform rate.

(2) Any excess profits duty and any munitions Exchequer payments which are remitted under this section for the purpose of collection shall not be deemed to have been paid for the purposes of sec. 35 of the principal Act (which relates to computation of profits and gains in relation to excess profits duty) as extended by this Act.

(3) Deductions shall not be allowed on account of munitions Exchequer payments in computing profits for the purpose of excess profits duty.

Provisions as to directors' fees.

49.—(1) Where the pre-war standard of profits is taken to be the percentage standard or is calculated by reference to the statutory percentage in the case of any trade or business owned or carried on by a company or other body corporate whose directors have a controlling interest, the Commissioners of Inland Revenue may, if they think fit, as respects any accounting period, including a past accounting period, for the purpose of the provisions relating to the statutory percentage and for the purpose of the determination and computation of profits under Part I. of the Fourth Schedule to the principal Act, treat the company or body corporate as if it were a firm and not a company or body corporate and the directors or any of them as if they were partners in the firm.

(2) If as respects any accounting period ending on or after the 1st day of July, 1915, the Commissioners of Inland Revenue refuse to allow a deduction in respect of any increase in the remuneration of directors of any trade or business, and the taxpayer is required to pay excess profits duty in respect of the disallowed deduction, the taxpayer shall be entitled to recover from any such director the amount which the taxpayer has paid by way of excess profits duty in respect of the increase; but any amount so recovered shall, unless the Commissioners otherwise direct, be treated as excess profits duty paid by the director from whom it is recovered and not as excess profits duty paid by the taxpayer.

(3) In this section, the expression "directors" includes any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business.

Further provision as to profits applied in extinction of previous losses.

50. Paragraph 7 of Part I. of the Fourth Schedule of the principal Act (which allows deductions to be made in respect of profits applied in extinction of losses) shall apply to a case where the capital account of any trade or business shows a debit balance as it applies to a case where the percentage standard is adopted as the pre-war standard of profits.

Provision as to accounting period.

51. It is hereby declared that, for the purpose of sub-sec. (2) of sec. 38 of the principal Act, any period for which the books of a trade or business have been actually made up for any interim or other purpose in such a manner that the profits for that period can be readily ascertained is (without prejudice to the powers of the Commissioners of Inland Revenue under that provision) to be taken as an accounting period, notwithstanding that under the articles of association of the company carrying on the trade or business or under any other regulations affecting the carrying on of the trade or business the accounts are also required to be made up for some other period, and notwithstanding that such accounts are not issued.

Provision as to accumulating profits.

52. It is hereby declared that, for the purpose of excess profits duty, profits of any trade or business arising and accumulating during any accounting period are not, during that period, to be treated as accumulated profits within the meaning of Part III. of the Fourth Schedule to the principal Act, or as capital employed in the trade or business.

Application of section 35 of the Finance (No. 2) Act, 1915, to munitions Exchequer payments.

53. Sec. 35 of the principal Act (which relates to the computation of profits and gains for the purpose of income tax in relation to excess profits duty) shall apply to sums actually paid in respect of munitions Exchequer payments as it applies to excess profits duty, except that the relief to the taxpayer under sub-sec. (2) of that section shall in all cases be given by means of repayment and not by deduction.

Deposit of sums for payment of excess profits duty.

54. Any person may deposit with the Commissioners of Inland Revenue any sums for the purpose of satisfying any excess profits duty which may thereafter become payable by him; and sums so deposited shall be applied in payment of any such duty as and when it becomes payable.

In calculating the amount to be so applied in payment of duty interest shall be allowed at such rate as may for the time being be determined by the Treasury.

Amendment of section 40 (3) of the principal Act.

55. Sub-sec. (3) of sec. 40 of the principal Act (which provides amongst other things for the reference of certain matters for the decision of a board of referees) shall, where the application for such a reference is made in respect of a trade or business carried on in a controlled establishment within the meaning of Part II. of the Munitions of War Act, 1915, and relates to an accounting period during any part of which the establishment has been so controlled, and to the postponement or suspension of renewals or repairs, or to the exceptional depreciation or obsolescence of assets, or to the necessity in connection with the present war of providing plant, have effect as though a referee or board of referees appointed or designated by the Minister of Munitions for the purpose were substituted for the board of referees under the principal Act.

Exemption from excess profits duty of businesses carried on under the Court.

56. In the case of any trade or business which by reason of its being unable to pay its debenture holders or creditors is being carried on by a liquidator, receiver or trustee under the court, no excess profits duty shall be levied or paid until provision has been made for payment of such unpaid debenture holders or creditors.

Definition.

57. In this Part of this Act the expression "munitions Exchequer payments" means any sums paid into the Exchequer under sec. 4 of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

FINANCE ACT, 1917.

PART III.**EXCESS PROFITS DUTY.****Continuance and increase of rate of excess profits duty.**

20.—(1) The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as the principal Act), shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the 1st day of August, 1917, and before the 1st day of August, 1918, as it applies to accounting periods ended after the 4th day of August, 1914, and before the 1st day of August, 1917.

(2) Sec. 38 of the principal Act shall, as respects excess profits arising in any accounting period commencing on or after the 1st day of January, 1917, have effect as if 80 per cent. of the excess were substituted as the rate of duty for 60 per cent. of the excess,

or, in the case of an accounting period which commenced before that date but ends after that date, as if 80 per cent. were substituted for 60 per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date.

In calculating any repayment or set-off under sub-sec. (3) of sec. 38 of the principal Act any amount to be repaid or set off on account of a deficiency or loss arising in any accounting period commencing on or after the 1st day of January, 1917, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of 80 per cent.

Any additional duty payable by virtue of this section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period.

(3) It shall be the duty of every person chargeable to excess profits duty, if he has not previously given notice of his liability to be charged with excess profits duty in respect of any accounting period, to give notice to the Commissioners within two months after the termination of any accounting period in respect of which he is chargeable, or, if the accounting period terminated before the passing of this Act, within one month after the passing of this Act.

If any person fails to give the notice required by this provision he shall be liable on summary conviction to a fine not exceeding £100, and to a further fine not exceeding £10 a day for every day during which the offence continues after conviction therefor.

Increase of rate of excess mineral rights duty.

21. Sec. 43 of the principal Act (which relates to excess mineral rights duty) shall have effect as if 80 per cent. of the excess were substituted as the rate of duty for 60 per cent. for any accounting year commencing on or after the 1st day of January, 1917, or, in the case of an accounting year which commenced before that date but ends after that date, as if 80 per cent. were substituted for 60 per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date, and any additional duty may be recovered accordingly :

Provided that where it is shown to the satisfaction of the Commissioners that the amount payable as rent under any lease or agreement for a lease for any accounting year in respect of which or any part of which excess mineral rights duty is payable at the rate of 80 per cent. is not greater than the average amount payable as rent for the two pre-war years the prices in which are selected by the taxpayer for the purpose of determining the pre-war

rent values of the rent for the accounting year, or would be reduced below that amount by the payment of excess mineral rights duty, no excess mineral rights duty or, as the case may be, such an amount of excess mineral rights duty only as will reduce the amount payable as rent for the accounting year to the said average amount, shall be paid for that accounting year.

Special provisions as to deficiencies and losses of shipping concerns.

22.—(1) In computing the excess profits duty of any trade or business which consists wholly or partly of the business of shipping the provisions of sub-sec. (3) of sec. 38 of the principal Act (which relate to the repayment or setting off of duty on account of deficiencies or losses) shall not apply in relation to any deficiency or loss in any accounting period commencing on or after the 1st day of January, 1917, and in the case of an accounting period which has commenced before that date but ends after that date, shall not apply in relation to so much of the deficiency or loss as may be apportioned under this Act to the part commencing on that date :

Provided that—

- (a) where the shipping business is carried on merely as ancillary to the principal trade or business, the provisions of this section shall not apply ;
- (b) where the trade or business carried on does not consist wholly of shipping, and the part which does not consist of shipping is not merely ancillary to the business of shipping, such apportionment of any deficiency or loss shall be made by the Commissioners as may be necessary to limit the application of this section to such part of the business as consists of shipping ; and
- (c) if in any such accounting period as aforesaid there has been a loss or the profits have not reached the point which would have involved liability to excess profits duty if the percentage standard had been adopted, the same amount shall, as respects the deficiency or loss or so much thereof as is affected by this section, be repaid or set off under sub-sec. (3) of the said sec. 38 as would have been repaid or set off if the percentage standard had been adopted.

(2) Any appeal under sub-sec. (5) of sec. 45 of the principal Act on any question arising under this section shall be to the Special Commissioners.

(3) In this section the expression “business of shipping” means the business carried on by an owner of ships, and for the purposes of this definition the expression “owner” includes any charterer to whom a ship is demised.

Relief in respect of Colonial excess profits duty.

23.—(1) His Majesty may by Order in Council declare—

- (a) that under the law in force in any of His Majesty's possessions excess profits duty is chargeable in respect of any profits in respect of which excess profits duty is also payable in the United Kingdom; and
- (b) that arrangements have been made with the Government of any such possession whereby, in respect of any profits, only the duty which is higher in amount is to be payable, and the amount of such duty is to be apportioned between the respective Exchequers in proportion to the amount of duty which would otherwise have been payable in the United Kingdom and in that possession respectively.

(2) Where any such Order in Council is made, then, if the Commissioners are satisfied that any case is one to which any such arrangements relate, they may, in lieu of any relief granted under paragraph 4 of Part I. of the Fourth Schedule to the principal Act, allow or make such remission or adjustments of duty as may be necessary to give effect to such arrangements, so, however, that the effect of such remission or adjustments shall not be less favourable than the relief in lieu of which they are allowed or made.

(3) The obligation as to secrecy imposed by sub-sec. (8) of sec. 45 of the principal Act shall not prevent the disclosure to the Government of the possession concerned of such facts as may be necessary to enable such arrangements as aforesaid to be carried into effect.

Further provisions with respect to munitions Exchequer payments.

24.—(1) The provisions of sec. 4 of the Munitions of War Act, 1915, with respect to munitions Exchequer payments shall not apply to any profits arising after the 31st day of December, 1916, or apportioned under this Act to the period after that date.

(2) Munitions Exchequer payments arising on or before the 31st day of December, 1916, or apportioned under this Act to the period down to and including that date shall, after the passing of this Act, be assessed and collected, or, if already assessed but not collected, collected, by the Commissioners, and shall be computed by them in accordance with the provisions of that Act and the rules made thereunder, and the Commissioners shall for those purposes have all the powers of the Minister of Munitions, including the power of making rules.

For the purposes of such assessment and collection, the provisions for the time being in force with respect to the assessment

and collection of excess profits duty (including provisions as to returns and penalties, but excluding provisions imposing any charge of duty or as to the computation of duty) shall apply, and rules may be made by the Commissioners accordingly, and the provisions of sec. 48 of the Finance Act, 1916, relating to the adjustment of excess profits duty and munitions Exchequer payments, shall apply subject to such modifications as may be necessary in consequence of the transfer of powers effected by this sub-section.

Any rules made by the Commissioners may specify matters which may be referred to the Minister, or to a referee or board of referees appointed by him, and prescribe the manner in which such cases are to be referred.

(3) For the purposes of sub-sec. (3) of sec. 5 of the said Act any establishments in which the same person has a controlling or preponderating interest may, if the Commissioners so determine, be treated as belonging to the same owner.

(4) Sub-secs. (2) and (3) of sec. 49 of the Finance Act, 1916 (which relate to the recovery of payments in respect of increased directors' fees), shall apply for the purposes of munitions Exchequer payments as they apply for the purposes of excess profits duty, with the necessary modifications.

Additional powers of reference to referees.

25. Notwithstanding anything contained in sec. 42 of the principal Act (which provides for the reference to the Board of Referees of questions as to percentages, &c.) the Commissioners may, if they think fit, refer to the Board of Referees any application made under that section as respects a class of trade or business, although the application may relate to matters already decided by that Board, and the Board may, if they think fit, on cause being shown by additional evidence or otherwise, reopen the case and make any order which they could have made on an application relating to matters not already decided by them, and may revise any order previously made by them affecting that class of trade or business; and any such order or revised order shall, as from such date as may be specified therein, apply and have effect in lieu of any previous order relating to the same matter.

Amendments of law as respects accounting periods ending after December 31st, 1916.

26. In the application of Part III. of the principal Act to excess profits duty for any accounting period ending after the 31st day of December, 1916, the following provisions shall have effect :—

- (1) In ascertaining the deduction to be made from the profits of the accounting period in respect of increased capital,

or the pre-war standard of profits in cases where there has not been one pre-war trade year, 3 per cent. shall be added to the statutory percentage per annum; and, accordingly, in sub-sec. (1) of sec. 41 of, and paragraph 4 of Part II. of the Fourth Schedule to, the principal Act, the expression "statutory percentage" shall be taken to mean the statutory percentage as so increased.

- (2) The statutory percentage shall, in the case of a trade or business not carried on or owned by a company or other body corporate, be taken to be 8 per cent. instead of 7 per cent; and accordingly sub-sec. (2) of sec. 40 of the principal Act shall have effect as though 8 per cent. were substituted for 7 per cent.

Provided that nothing in this provision shall affect the amount of the statutory percentage for the purposes of sub-sec. (2) of sec. 41 of the principal Act.

- (3) Any increase of the statutory percentage under this section shall be in addition to any increase of the statutory percentage which has, before the passing of this Act, been made under sec. 42 of the principal Act.
- (4) Where the pre-war standard of profits of any trade or business does not exceed £500, and the profits of the accounting period, after any adjustment in respect of increased or decreased capital, are less than £2,000, sub-sec. (1) of sec. 38 of the principal Act shall have effect as though for £200 there were substituted £200 with the addition of one-fifth of the amount by which the profits of the accounting period are less than £2,000; so, however, that if there has been a loss in the accounting period, then for the purpose of ascertaining the amount of any repayment or set-off under the principal Act the addition allowed shall be such as if there had been neither loss nor profit, and that where the accounting period is a period of less than a year, this provision shall have effect as if there were substituted for £2,000 and £200 respectively a proportionately reduced amount.

The foregoing provision shall apply where the pre-war standard of profits exceeds £500, subject to this qualification, that the amount of the addition shall be reduced by the amount by which the pre-war standard exceeds £500.

- (5) Where the Commissioners are satisfied—

- (a) that in connection with any trade or business two or more distinct and independent industries are carried on in separate establishments, and with books kept in such a manner that the profits in respect of each industry can be readily ascertained; and

- (b) that in any year by reference to which the pre-war standard of profits is calculated a loss has been sustained in respect of any one or more of such industries ; the Commissioners may, if they think fit, in computing the profits standard, disregard that loss ;
- (6) Where the Commissioners are satisfied that during the last six pre-war trade years, owing to trading losses—
- (a) any former assets of any trade or business have ceased to form part of the assets of that trade or business ; or
 - (b) the money borrowed in respect of the trade or business or the debts of the trade or business have increased ;
- the Commissioners shall, for the purpose of ascertaining the capital of the trade or business in any case where the percentage standard is adopted, compute the capital as though there had been no such loss of assets or increase of borrowed money or debts.
- (7) Six years shall be substituted for three years in sub-sec. (4) of sec. 41 of the principal Act (which provides for the adjustment of excess profits duty in respect of unremunerative capital).
- (8) The excess profits duty of a society registered under the Industrial and Provident Societies Acts may, if the society so requires, instead of being computed as provided for by paragraph 10 of Part I. of the Fourth Schedule to the principal Act, be computed as follows :—

The amount of excess profits (if any) arising on commercial transactions with non-members shall be separately ascertained in accordance with the general principles of the principal Act, and there shall be added thereto the amount (if any) by which the profit or surplus arising from transactions with members per pound sterling of turnover in the accounting period exceeds the like profit or surplus in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits in respect of such commercial transactions as aforesaid, multiplied by the number of pounds sterling of turnover in the accounting period ; and excess profits duty shall be charged on the sum of those amounts :

Provided that the method of computation hereby laid down shall not be adopted for ascertaining the amount of any deficiency or loss for the purposes of sub-sec. (3) of sec. 38 of the principal Act, nor shall any duty computed under this provision be repaid or remitted by reason of a deficiency or loss in any other accounting period computed as provided for by the said paragraph 10.

Regulations made by the Commissioners for the purpose of carrying the foregoing provision into effect may provide for defining and ascertaining turnover and the profit or surplus per pound sterling thereof, and for the application of that provision to new societies, and for extending, subject to such modifications as may be prescribed, to cases where duty is computed under that provision any of the general principles of the principal Act as to relief from duty.

Apportionment of accounting periods and years.

27. Where part of an accounting period or of an accounting year, or of any period in respect of part of which munitions Exchequer payments are chargeable, is after, and part before, the beginning of the 1st day of January, 1917, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, and the total profits in respect of part of which munitions Exchequer payments are chargeable, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively.

Interpretation.

28. In this Part of this Act references to the principal Act, or to the Munitions of War Act, 1915, or to any provisions of those Acts, shall be construed as references to those Acts or provisions as amended by any subsequent enactment, and the expression "the Commissioners" means the Commissioners of Inland Revenue, and the expression "munitions Exchequer payments" in this Part of this Act and in any other enactment, includes any sums payable into the Exchequer under sec. 4 of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

FINANCE ACT, 1918.

PART III.

EXCESS PROFITS DUTY.

Continuation of Excess Profits Duty.

34. The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as "the principal Act"), as amended or extended by any subsequent enactment, shall, so far as it relates to Excess Profits Duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the 1st day of August, 1918, and before the 1st day of August, 1919, as it applies to accounting periods ended after the 4th day of August, 1914, and before the 1st day of August, 1918.

Profits arising from sale of trading stock.

35.—(1) For the purposes of Excess Profits Duty the profits arising from the sale at any time after the 22nd day of April, 1918, otherwise than in the ordinary course of trade of the trading stock or part of the trading stock belonging or formerly belonging to any trade or business, shall be deemed to be profits arising from a trade or business, and where any such sale takes place after a trade or business has ceased the trade or business shall be deemed to have been carried on up to and including the date on which the sale takes place, and the accounting period shall be taken to be such as the Commissioners of Inland Revenue may determine.

(2) Where a trade or business has ceased but is deemed for the purposes of this section to have been carried on for any period—

- (a) the person by whom or by whose authority any trading stock is sold whether as owner, agent, liquidator, trustee or receiver or other person acting in a similar capacity shall be deemed to be the person carrying on the trade or business, and Excess Profits Duty shall be assessed on and recoverable from that person, and nothing in sub-sec. (2) of sec. 45 of the principal Act shall operate so as to impose any liability to duty on the purchaser of the trading stock; and
- (b) the appointment of any such liquidator, trustee or receiver, or other person shall not be treated as a change of ownership of the trade or business, and sub-sec. (3) of sec. 38 of the principal Act and paragraph 7 of Part I. of the Fourth Schedule to that Act as amended by any subsequent enactment, shall have effect as if the profits arising from the sale of the trading stock had been made by the owner of the business immediately before the appointment of the liquidator, trustee, receiver or other person, and as if the duty were payable by him.

(3) Where any trading stock is sold together with other assets of the trade or business, the part of the consideration attributable to the trading stock shall, subject to appeal in manner provided by sub-sec. (5) of sec. 45 of the principal Act, be determined by the Commissioners of Inland Revenue, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(4) For the purpose of this section any trading stock which has been disposed of otherwise than by way of sale shall be deemed to have been sold, and any such trading stock so disposed of, and any trading stock which has been sold for a consideration other than cash, not being a consideration the value of which can be easily ascertained, shall be deemed to have realized the market price of the day on which it was so disposed of or sold.

No person shall at any time after the 14th day of May, 1918, dispose otherwise than by way of sale of any trading stock unless

he has previously made provision to the satisfaction of the Commissioners of Inland Revenue for securing the payment of any Excess Profits Duty which may be chargeable by virtue of the provisions of this section, and if any person attempts to dispose of any trading stock in contravention of this provision the disposal shall be void and of no effect.

(5) In this section the expression "trading stock" includes—

- (a) any goods such as are sold in the ordinary course of a trade or business whether in a finished condition or not; and
- (b) any raw or other materials used in the manufacture or preparation of any such goods,

and references to disposal of trading stock do not include disposal by way of testamentary disposition.

FINANCE ACT, 1919.

Continuance of Excess Profits Duty at decreased rate.

32.—(1) The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as "the principal Act"), shall, so far as it relates to Excess Profits Duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the 1st day of August, 1919, and before the 5th day of August, 1920, as it applies to accounting periods ended after the 4th day of August, 1914, and before the 1st day of August, 1919.

(2) Sec. 38 of the principal Act shall, as respects excess profits arising in any accounting period commencing on or after the 1st day of January, 1919, have effect as if 40 per cent. of the excess were substituted as the rate of duty for 80 per cent. of the excess, or, in the case of an accounting period which commenced before that date but ends after that date, as if 40 per cent. were substituted for 80 per cent. as respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date.

In calculating any repayment or set off under sub-sec. (3) of sec. 38 of the principal Act, any amount to be repaid or set off on account of a deficiency or loss arising in any accounting period commencing on or after the 1st day of January, 1919, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this Part of this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of 40 per cent.

Decrease of rate of Excess Mineral Rights Duty.

33.—(1) Sec. 43 of the principal Act (which relates to excess mineral rights duty) shall have effect as if 40 per cent. of the excess were substituted as the rate of duty for 80 per cent. for any

accounting year commencing on or after the first day of January, 1919, or, in the case of an accounting year which commenced before that date but ends after that date, as if 40 per cent. were substituted for 80 per cent. as respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date.

(2) The proviso to sec. 21 of the Finance Act, 1917, shall apply to any accounting year in respect of which or any part of which excess mineral rights duty is payable at the rate of 40 per cent., as it applies where the said duty is payable at the rate of 80 per cent.

Extension of relief in respect of Colonial Excess Profits Duty.

34. Sec. 23 of the Finance Act, 1917 (which provides for relief in respect of Colonial Excess Profits Duty), shall have effect, and shall be deemed always to have had effect, as though references to His Majesty's possessions included references to any territory under His Majesty's protection.

Apportionment of accounting periods and years.

35. Where part of an accounting period or of an accounting year is after, and part before, the beginning of the 1st day of January, 1919, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively.

Interpretation.

36. In this Part of this Act references to the principal Act, or to any provisions of that Act, shall be construed as references to that Act, or those provisions, as amended or extended by any subsequent enactment.

EXCESS PROFITS DUTY.

Regulations prescribed by the Commissioners of Inland Revenue under Sec. 45, Sub-sec. (7), of the Finance (No. 2) Act 1915 (5 & 6 Geo. 5, c. 89).

1. Subject to the express provisions of the Act and these Regulations, the Sections of the Income Tax Acts enumerated in the Schedule to these Regulations shall, with the modifications therein described, apply to the assessment and collection of Excess Profits Duty and the hearing of appeals in connection therewith.

2 If in any case any person required by law to make a return fails to do so, or if the return made by him appears to the Commissioners of Inland Revenue to be incorrect or insufficient, the Commissioners may, without prejudice to the enforcement of any penalty which may have been incurred, make an assessment of Excess Profits Duty according to the best of their judgment.

3. Notice of an assessment shall be served on the person charged or on the person in whose name he is charged.

4. A notice of assessment under the Act may be delivered to the person on whom it is intended to be served, or served upon him by post.

Service by post in this Regulation shall have the same meaning as in the Interpretation Act, 1889.

5. Any person dissatisfied with the amount of any assessment made upon him may at any time within thirty days from the date of the service of notice of assessment, or within such further time as the Commissioners of Inland Revenue may allow, give notice to the Surveyor of Taxes named in the notice of assessment of his intention to appeal against the amount of the assessment, and every such notice shall specify the grounds of appeal, and, in England, Scotland, and Wales, whether the appellant desires that the appeal shall be heard by the General Commissioners or the Special Commissioners.

6. With reference to any notice of appeal and to the hearing of an appeal, the General or Special Commissioners, as the case may be, shall, subject to the provisions of the Act, and to any Regulations made thereunder, have all such powers in relation to any matter of appeal as are possessed by them in relation to notices of appeal and the hearing of appeals under any Act for the time being in force relating to income-tax. The General or Special Commissioners shall certify in writing to the appellant and to the Commissioners of Inland Revenue after determining any appeal their decision and the amount, if any, by which any assessment has been thereby altered.

7. The Commissioners of Inland Revenue may be represented on the hearing of an appeal by any person nominated in that behalf by them, and any person so nominated shall have the same powers with reference to appeals as may for the time being be exercised by a Surveyor of Taxes with reference to appeals relating to income-tax.

8. A Surveyor of Taxes may for any purpose in connection with the assessment and collection of the Duty and the hearing of appeals make use of or produce in evidence any returns, correspondence, schedules, accounts, statements, or other documents to which he has had or may have lawful access for the purposes of income-tax, and shall have the same right to examine all accounts, schedules, and statements furnished to the General or Special Commissioners as he has in the case of appeals relating to income-tax.

9. Any barrister or solicitor or member of an incorporated society of accountants may be heard by the General or Special Commissioners on an appeal.

10. No Commissioner interested in his own right, or in the right of any other person, in any matter under appeal, shall take part in or be present at the hearing or determination thereof.

11. The Commissioners of Inland Revenue may make additional assessments in any case where they deem it necessary at any time within three years from the date of the first assessment :

Provided that no such additional assessment shall be made in any case where an assessment has been reduced by the General or Special Commissioners upon an appeal or by any Court by which an appeal has been re-heard.

12. Any notices required to be given to the Commissioners of Inland Revenue may be given either to the Commissioners at their principal office in London, or to the Surveyor of Taxes acting for the district in which the person giving such notice resides or carries on business.

13. In these Regulations, unless the context otherwise requires, the expression "Surveyor of Taxes" means a Surveyor as defined by the Taxes Management Act, 1880, and "the Act" means the Finance (No. 2) Act, 1915.

By order of the Commissioners of Inland Revenue.

6th January, 1916.

P. THOMPSON,
Secretary.

SCHEDULE.

Income Tax Act, 1842 (5 & 6 Vict., c. 35) :—

Sec. 40.

„ 41, save in so far as it relates to a married woman.

„ 44.

51, save in so far as it relates to a married woman.

100, Schedule D, Rules applying to the first and second cases of that schedule, Rule 3, down to and including the words "and no separate statement shall be allowed in any case of partnership."

Taxes Management Act, 1880 (43 & 44 Vict., c. 19) :—

Sec. 15, Sub-secs (2) and (5).

„ 55, down to and including the words "the several particulars on which the charge is made"

Finance Act, 1907 (7 Ed. 7, c. 13) :—

Sec. 22, Sub-sec. (2).

Finance Act, 1914 (4 & 5 Geo. 5, c. 10) :—

Sec. 10, Sub-sec. (2).

Finance (No 2) Act, 1915 (5 & 6 Geo 5, c 89) :—

Sec. 31.

PROCEDURE ON REFERENCES TO BOARD OF REFEREES.

Procedure to be followed on applications and references to the Board of Referees under Part III. of the Finance (No. 2) Act, 1915, hereinafter referred to as "the Act."

PROCEDURE.

1 Applications shall be made in manner prescribed by the following provisions, or any further or substituted provisions made by the Board of Referees

PROCEEDINGS BEFORE REFERENCE.

2. An applicant for the modification of the provisions of the Fourth Schedule to the Act before requiring the Commissioners of Inland Revenue (hereinafter referred to as "the Commissioners") to refer his case to the Board of Referees under the provisions of sec. 40 (3) of the Act shall deliver to the Commissioners an application in accordance with Form A hereto annexed.

3. Applications under the provisions of sec. 42 (1) of the Act to increase the statutory percentage or to alter the mode of calculation of the percentage standard by applicants applying collectively or as an association of traders or by a representative authorized by them to make an application on their joint behalf, shall be made in accordance with Form B (1) hereto annexed; and applications under sec. 42 (2) of the Act to alter the pre-war standard of profits in respect of individual businesses shall be made in Form B (2) hereto annexed.

Together with the application the applicant shall deliver to the Commissioners four copies of the application and of any statement of facts delivered therewith.

4. An application shall be signed by the applicant or a person duly authorized by the applicant and verified by statutory declaration.

5. There may be attached to an application a concise statement of facts verified by a statutory declaration in support of the application.

REFERENCES UNDER SEC. 40 (3).

6. The determination of the Commissioners upon an application made in conformity with the foregoing provisions for modification of the provisions of the Fourth Schedule to the Act will be signified by the Commissioners to the applicant by a statement in accordance with Form C hereto annexed.

7. Notice by an applicant that he requires a reference of his case to the Board of Referees under sec. 40 (3) of the Act, and of his intention to proceed upon such a reference, shall be given to the Commissioners by sending five copies of the notice in accordance with Form D hereto annexed within twenty-one days

after the determination of the Commissioners on the case has been signified to the applicant.

A notice given under this provision is hereinafter referred to as a notice of appeal, and the proceedings thereon before the Board of Referees as an appeal.

8. Together with the notice of appeal the applicant shall deliver to the Commissioners five copies of a concise statement of any facts, beyond those set forth in or with his application, of which he has given evidence to the Commissioners and upon which he relies to support the matters alleged in his notice of appeal.

9. The Commissioners upon receiving a notice of appeal will refer the same as soon as may be to the Board of Referees by delivering to the Board the notice of appeal together with the statement of facts delivered by the applicant.

The Commissioners will on referring these documents to the Board also send to the Board a statement showing to what extent the Commissioners admit or do not admit the accuracy of the statement of facts furnished by the applicant.

10. In case no matter of fact shall be in dispute on an appeal, the Board of Referees will appoint a date and place for hearing the appeal upon the agreed facts.

11. In case any matter of fact shall be in dispute on an appeal, the Board of Referees will upon an interlocutory appointment give directions as to proof and procedure and fix a time and place for hearing the appeal.

REFERENCES UNDER SEC. 42.

12. Reference by the Commissioners to the Board of Referees of an application for an increase of the statutory percentage, or for an alteration of the mode of calculation of the percentage standard, or for an alteration of the pre-war standard of profits, will be made by the communication by the Commissioners to the applicant and to the Board of Referees of the Order of Reference in accordance with Form E hereto annexed.

Together with such notice, the Commissioners will deliver to the Board of Referees a statement showing to what extent, if any, they are in a position to admit any facts stated by the applicant in his application

13. In case the Commissioners are in a position to admit the accuracy and sufficiency of the facts stated by the applicant in his application, the Board of Referees will appoint a day and place for the hearing and determination of the same upon the agreed facts.

14. In case the Commissioners are not in a position to admit the accuracy and sufficiency of the facts stated by the applicant in his application, the Board of Referees will on an interlocutory appointment give directions as to proof and procedure and fix the time and place of hearing and determination.

GENERAL.

15. Applications to the Board of Referees shall be made by letter addressed to the Registrar of the Board, at the Refuge Assurance Building, 133 Strand, W.C.

16. Not less than five days' notice will be given of an interlocutory appointment of the Board of Referees, and not less than seven days of an appointment for hearing an appeal or reference.

17. An applicant may attend before the Board of Referees in person or by a duly appointed representative.

In case an applicant desires to attend otherwise than in person, he shall give notice to the Commissioners and to the Board of Referees not less than two days before the time fixed in an interlocutory appointment, and not less than four days before the time fixed for hearing an appeal or reference. Such notice shall state by whom or in what manner the applicant intends to be represented.

18. Upon any appointment before the Board of Referees the Commissioners may appear by any representative appointed by them and, subject to the directions of the Board, may be heard upon the questions arising for determination.

19. No adjournment of an appointment by the Board of Referees will be made except by order of the Board.

20. Any statement to be delivered pursuant to these provisions shall set forth concisely in numbered paragraphs material facts only.

A statement which shall be found to depart substantially from this provision will be deemed not to have been duly delivered.

21. Any person who desires that his case should be referred to the Board of Referees should apply to the Secretary of the Commissioners of Inland Revenue, Somerset House, W.C., for the necessary forms.

22. Delivery of notices and documents shall be made—
to the Board of Referees, by registered letter addressed to the Registrar of the Board*;
to the Commissioners, by registered letter addressed to the Secretary of the Commissioners of Inland Revenue, Somerset House, W.C. ;
to an applicant, by registered letter addressed to him at the address named in his application.

23. The procedure laid down in these provisions may be amended by further or substituted provisions made by the Board of Referees as may appear to them needful.

24. The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these provisions in like manner as it applies for the purpose of the interpretation of an Act of Parliament.

* For address see Rule 15.

ADDENDA

Rules 7 and 8. For "five" read "six."

Rules 9 and 12. Add to second paragraph. "The Commissioners will at the same time forward a copy of their statement to the applicant."

Rules 11 and 14. Add. "A copy of the shorthand note taken on the hearing at an interlocutory application shall be sent by the Registrar to the Applicant."

Rule 17A. At least seven days before the hearing of an appeal or reference the applicant and the Commissioners shall lodge with the Registrar of the Board six copies of any documents upon which he or they intend to rely.

Rule 25. (*New*). A shorthand note shall be taken on the hearing of every application. A transcript shall not be prepared nor the same printed without the order of the Chairman, as evidenced by a note under the hand of the Registrar. Where such order is obtained at the instance of an applicant, the cost of such transcript and print shall be borne by him by arrangement with the official shorthand writer.

Rule 26. (*New*). Orders of the Board upon applications made under sec. 42 (1) of the Act shall be published in the "London Gazette." Orders upon applications made under sec. 40 (3) or sec. 42 (2) shall not be published.

Rule 27. INDIVIDUAL APPLICATIONS UNDER SEC. 42 (1)
DEFINITIONS.

In cases where the application is individual and not representative a class or subdivision of a class must be capable of definition by special incidents, the essential character of which must be peculiar to the proposed class or subdivision. They must be the incidents, not the accidents, of the trade itself. Furthermore, they should be of substantial importance, and material in relation to the liability to Excess Profits Duty.

Rule 28. Proofs of any witness whom it is intended to call shall be handed by the applicant and the Commissioners to the Registrar and to each other if possible seven days before any hearing (Cf. Rule 17A). This shall not preclude any witness from supplementing his proof at the hearing in cross-examination or re-examination.

SPENCER HOUSE,
27, ST. JAMES'S PLACE, S.W.1.

February, 1917.

FORM A.

FINANCE (No 2) ACT, 1915.

PART III.—EXCESS PROFITS DUTY.

Particulars of application for modification of the provisions of the Fourth Schedule of the above Act. (*See* sec. 40 (3).)

Number of case (to be supplied by the Commissioners of Inland Revenue).

1 Name and address of applicant :

Firm name, description,
and locality to be
specified.]

2. Trade or business in question :

3. Is application on the ground of—

(a) a change in the constitution of a partnership ?

If so, supply date or dates, names and material facts, including particulars of the constitution of the partnership and division of profits before and after the change.

(b) the postponement as a consequence of the present war of renewals or repairs ?

If so, state concisely the character of such renewals or repairs and the amount that would have been expended in the accounting period but for the war.

(c) exceptional depreciation or obsolescence of assets due to the present war ?

If so, state concisely the description and cost price of such assets, and the nature and extent of the depreciation or obsolescence during the accounting period.

(d) The necessity in connection with the present war of providing plant ?

If so, state the particulars of the necessity and of the expenditure, and of the prospects of employing the plant after the termination of the war.

(e) other special circumstances specified in Regulations made by the Treasury ?

If so, identify the Regulation relied on and state the special circumstances.

Specify with consecutive numbers the number of each paragraph in the Schedule sought to be modified and each specific modification which is sought.]

4. What modification of the Fourth Schedule to the Act is applied for, and what is the consequential alteration of the amount of liability ?

Signature of applicant, or his authorized representative.

Date

FORM B (1).

FINANCE (No. 2) ACT, 1915.

PART III.—EXCESS PROFITS DUTY.

Particulars of application to increase the statutory percentage or to alter the mode of calculation of the percentage standard under sec. 42 (1).

Number of case (to be supplied by the Commissioners of Inland Revenue).

1. Name and address of applicant or applicants :
2. Class of trade or business, or sub-division thereof based on special features or on locality :
3. Title or qualification of the applicant or applicants to represent the class, and identification, by name and description, of the persons (including firms and corporations) who are parties to the application and have consented to be bound by the determination thereof :
4. If the applicant makes his application in respect of a sub-division of a class of trade or business based on special features or on locality, state the special features, and/or the circumstances as to locality which are relied on :
5. Is the application for—
 - (a) an increase of the statutory percentage ?
If so, state what increase is asked for, and on what grounds in point of fact.
 - (b) calculation of the percentage standard by reference to a factor or factors other than the capital employed ?
If so, state what is or are the factor or factors, and what altered method is sought, and on what grounds in point of fact ?

Signature of applicant or applicants or the authorized representative.

Date

FORM B (2).

FINANCE (No. 2) ACT, 1915.

PART III.—EXCESS PROFITS DUTY.

Particulars of application to alter the pre-war standard of profits under sec. 42 (2).

Number of case (to be supplied by the Commissioners of Inland Revenue).

1. Name and address of applicant :
2. Trade or business in question :
3. What alteration of the pre-war standard of profits is sought as respects capital employed for the purpose of manufacture of war material or for munitions work, and on what grounds in point of fact ?

Signature of applicant or his authorized representative.

Date

FORM C.

FINANCE (No. 2) ACT, 1915.

PART III —EXCESS PROFITS DUTY.

[Section 40 (3).]

Number of case.

Determination of the Commissioners of Inland Revenue.

Upon the application of

of
for modification of the provisions of the Fourth Schedule to the
above-mentioned Act in relation to the trade or business of
on at

Commissioners of Inland Revenue have determined to ^{allow}~~disallow~~ the
application to the extent below specified.

[Stating the
case as
may be.]

Signed

Secretary of the Board of Inland
Revenue, Somerset House,
the day of 191

FORM D.

FINANCE (No. 2) ACT, 1915.

PART III.—EXCESS PROFITS DUTY.

Notice of the requirement of a Reference.

[Section 40 (3).]

Number of case.

Whereas the undersigned applicant made application to the Commissioners of Inland Revenue under the Finance (No. 2) Act, 1915, in manner appearing in the annexed form of application "A":

And whereas [the said Commissioners refused on such applica-
tion to allow the modifications applied for] or [the applicant is
dissatisfied with the modifications allowed by the Commissioners]
the applicant hereby requires the said Commissioners to refer the
case to the Board of Referees appointed for the purpose of
Part III. of the said Act, and gives notice that he intends to
proceed before the Referees under the said reference so far as the
determination of the Commissioners relates to items
in paragraph 4 of his application.

[Stating the
case as it
may be.]

(Signed)

(Appellant.)

Address

The

day of

191 .

To the Commissioners of Inland Revenue.

EXCESS PROFITS DUTY.

INCREASED STATUTORY PERCENTAGES.

The following percentages have been fixed by the Board of Referees under sec. 42 of the Finance (No. 2) Act, 1915. The rates given are for Companies, an additional 1 per cent. being allowed for firms and sole proprietorships.

For accounting periods ending after 31st December, 1916, the percentage for firms and sole proprietorships is increased by a further 1 per cent, and for all concerns, an additional 3 per cent. is allowed for increased capital.

Trade or Industry.	Percentages for Companies.
Aeronautical Instruments Manufacture	6
Agriculture (Greece)	12
Aircraft Engines Manufacture	9
Aircraft Manufacture	15
Alluvial Tin Mining (Nigeria)	13
Antimony Mining and Smelting in Mexico	17
Antimony Smelting	6
Asbestos Mining (Crysotile) in Rhodesia	16
Balata in British Guiana	10
Boot Manufacture	6
Cane Sugar Production (British West Indies)... ..	7
Cement Manufacture	6½
Chrome Ore Mining (New Caledonia)	22½
Cinchona (Quinine) Tree Cultivation (East Indies, excluding Indian Empire)	10
Cinematograph	11
Coal Mining	9
Coal Mining in Bengal	10
Coal Mining (Rhodesia)	10
Coal Mining South African)	9
Cocoanut Production (West Indies)	11½
Cocoanuts Production (Middle East)	10
Cocoanuts and Palmyra Palms; Manufacture of Products of (Southern India and Ceylon), excluding Copra	8½
Coffee-growing (East Indies, excluding Indian Empire)	9
Coke Manufacture	8
Coke Manufacture in Rhodesia	9
Cold Storage Proprietors	7½
Copper Mining and Smelting in California	10
Copper Mining and Smelting (Chili)	10
Copper Mining (Rhodesia)	15
Cotton (Sudan)	12
Daily Newspapers	8
Electric Cables Manufacture	7
Electric Light and Power (Hankow)	9
Electric Supply (India)	7
Electric Supply (London)	7
Electric Supply (Provinces)	7½
Electric Traction in Shanghai	9
Electric Tramways (Cape Colony)	7½
Electric Tramways (India)	7
Electrical Machinery Manufacture	7
Electrical and Compressed Air Power, Supply of, in Transvaal	9
Electrical Energy Supplies	7½
Electrical Supply (Victoria)	7½
Electrode Manufacture	6
Engineering (Bengal)	8
Erinoid—Production from Casein by pressure and chemical process, of a horn-like material which is non-inflammable and non-conducting	7½
Explosives	8
Extraction of Essences from the Quebracho Tree	9
Ferro-concrete Shipbuilding	15
Fire, Accident, and General Insurance (other than Life and Marine)	See note below.
Fireclay Mining and Manufacturing Refractory Goods therefrom	7

Trade or Industry.	Percentages for Companies.
Flax, Preparation of	10
Flour Milling in South America	7½
Gold Mining in Brazil	13
Gold Mining in Columbia (excluding recovery of Gold from alluvial working and by dredging)	15
Gold Mining (India)	27½
Gold Mining in Egypt and Sudan	27½
Gold Mining (Rhodesia)	22½
Gold Mining in West Africa	22½
Grain Export from Argentine	7½
Grecian Magnesite Miners	10
Hosiery	6
Incandescent Gas Mantles, Manufacture	9
Indigo Growing and Manufacture (British India and Native States)	12
Iron and Steel Industries (Bengal)	10
Iron Ore Mining in Algeria	14
Iron Pyrites in Iberian Peninsula	6
Jute Merchants	6
Jute Spinning (Bengal)	7
Land in Egypt, Agricultural	9
Land in Egypt, reclaimed	11
Lead Mining (W. Australia)	14
Lead and Zinc Mining (Italy)	8
Lending on Mortgage of Land: Crops in Mauritius	7½
Lloyd's Underwriters	<i>See note below.</i>
Magneto Manufacture	11
Makers of Permanent Magnets	11
Manganese Ore Mining in Great Britain	16
Manganese Ore Mining (Iberian Peninsula)	12½
Manganese Ore Mining (India)	10
Mangrove Bark (Borneo)	10
Marine Insurance	<i>See note below.</i>
Marine Salvage	15
Metalliferous Ores in Burma	12½
Metals and Alloys (for high-speed steel production)	12
Military Ornaments Manufacture	8½
Motor Manufacturers	7
Music Hall Proprietors	11
Myrabolam Production in India	11
Newspapers (Scotland)	8
Nickel Mining in New Caledonia	8
Nitrate Extracting and Refining (Chili)	9
Oil Production (Assam)	8
Oil Production (California)	8½
Oil Production (Caucasus)	10½
Oil Production (Persia)	11
Oil Production (Roumania)	8½
Oil Production (South Russia)	14
Oil Production (Trinidad)	14
Oil Raising (Burmah)	8½
Oil Raising (Peru)	8½
Omnibuses (Provincial)	8
Omnibuses (London)	8
Paint, Colour and Varnish	6
Philippine Merchants	7½
Pig Iron, Manufacture of	7
Portland Cement (South Africa)	8½

Trade or Industry.	Percentages for Companies.
Potato Flake Manufacture	6
Road Making Materials, manufacture from Slag or Tar ...	8½
Rubber Goods Manufacture	6
Rubber Growers	10
Rubber Production (Bolivia)	10
Salt, Production of	7½
Shale Mining (Scotland)	9½
Sheep Farming (Chili and Patagonia)	11
Ships	6
Silica Ware Manufacture	8
Sisal (East Africa)	10
Steel Manufacture	8
Stevedores (Port of London)	6
Sugar Cane Growing and Sugar Manufacture (Portuguese East Africa)	11½
Sugar Growing and Manufacture in Argentine	11
Sugar Growing and Manufacture in British India	11
Sugar Growing (Natal)	11½
Sugar Production (West Indies)	11
Sugar Production (Mauritius)	11½
Sulphide Ores, Mining, Milling and Smelting (New South Wales)	9½
Synthetic Dyes	9
Table Glass Ware, Import of	6
Tea and Coffee Dealers, London (Wholesale)	6
Tea Growing (Ceylon and India)	8
Tea Growing and Manufacture (Netherlands East Indies) ...	8
Teak Wood, Buying, Cutting and Selling (East Indies, excluding Indian Empire)	10
Telephone Service (Chile)	7½ from 1st Jan., 1917 on'y
Theatres (West End)	15
Theatres (other than West End)	11
Thoroughbred Breeders	13
Tin Dredging (Malay and Siam)	13
Tin Mining in Malay (Lode Tin)	16
Tin Mining (Malay)	13
Tin Mining (U. K.)	25
Tramways (Great Britain and Ireland)	7½
Tramways (New Zealand)	7½
Tramways in Victoria	7½
Tungsten and Molybdenum Wires Manufacture	12
Typewriter Manufacture	9
Wattle Growing in Natal	9
Wolfram Mining in Portugal	11
Wood Pulp Manufacture (Portugal)	8
Woollen Textile Trade in Holywell Valley	6
Zinc Oxide Manufacture in U.K.	12

Lloyd's Underwriters and Marine Insurance Companies.—In this case the order was that the percentage standard is to be calculated upon the capital at stake, which capital was to be taken to be equivalent to the net premium income of the year at the end whereof capital is to be reckoned.

The normal percentage rates are applied to the net premium income, viz., 6 per cent. for Companies and 7 per cent. for individuals, subject to the modifications of the Finance Act, 1917.

Fire, Accident and General Insurance (other than Life and Marine). In this case the order was similar to that shown above for Lloyd's Underwriters, except that the capital was to be taken as equivalent to one-half of the net premium income.

EXCESS PROFITS DUTY.

DEPRECIATION IN VALUE OF SHIPS BUILT DURING THE WAR.

1. Speaking generally, excess profits duty is chargeable by reference to profits which are computed on income tax principles. But the temporary character of the duty and its relation to the existing war conditions have rendered necessary certain special allowances (which are not granted for income tax purposes) for depreciation in the value of assets. It is the purpose of this memorandum to explain shortly the principles underlying these allowances in the excess profits duty, with particular reference to the case of ships built under contracts entered into at the high prices obtaining during the war.

2. So far as income tax is concerned the question is governed, as is well known, by sec. 12 of the Customs and Inland Revenue Act, 1878, which provides for an allowance only in respect of the *wear and tear* of machinery and plant. For excess profits duty purposes, on the other hand, the law allows additional factors to be taken into account, and sec. 40 (3) of the Finance (No. 2) Act, 1915, provides for special relief being granted in respect of—

- (a) postponement or suspension as a consequence of the present war of renewals or repairs.*
- (b) exceptional depreciation or obsolescence of assets employed in the business due to the present war, or
- (c) the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war.

3. Under sec. 40 (3) aforesaid the Board of Inland Revenue recognise in normal circumstances claims for allowances (for excess profits duty purposes) in respect of the depreciation in value of assets, such as ships built under war conditions at high prices which will sink to a lower level of value at the termination of the war. The aggregate amount of the allowance to be granted will, speaking generally, have reference to the difference between the original cost price of the asset *plus* any subsequent capital expenditure and its value after the war.

4. Inasmuch as post-war value and the duration of the war are at present unknown factors a final settlement is at the moment impracticable, but the Board of Inland Revenue are none the less ready to consider, and on reasonable evidence to allow, claims

* The amount of the proper allowance for Excess Profits Duty purposes, on account of the postponement or suspension of repairs is usually capable of estimation and agreement at the time the assessment is made.

made provisionally at the present time in respect of the difference between the cost price of vessels built under war conditions and their *probable* value after the war ; for the purpose of provisionally estimating the post-war value they will pay regard to the pre-war cost of similar ships as one of the available factors which may fairly be taken into account. Provisional allowances so granted will be made by instalments in successive accounting periods, and will be subject to adjustment after the termination of the war when the post-war value contemplated by the statute finally falls to be determined.

5. It will be observed that the final settlement contemplated is to be made in all cases by reference to the *post-war* value of the ships concerned and not to any estimated *pre-war* cost which may have been provisionally considered in the circumstances referred to in the preceding paragraph.

6. The Board of Inland Revenue are prepared to consider claims of the foregoing nature, not only in respect of vessels contracted for and built during the war, but also in respect of (a) vessels contracted for before the war in cases where additional sums have been paid to secure completion under war conditions, and (b) vessels contracted for during the war at war prices in cases where delivery takes place after the war.

7. It will be appreciated that special circumstances or special statutory provisions may modify the general principles set out above, and reference should be made in particular to sec. 47 of the Finance Act, 1916, which may be applied in the case of a ship sold since the 4th August, 1914, in such circumstances that the profits of the sale are not the profits of a trade or business. In cases where that section is applied—and speaking generally it may be said that the section is applicable where the ship is purchased from another British shipowner, but not where it is purchased from a ship builder—the purchaser is not entitled to claim any greater allowance for depreciation, &c., than could have been claimed by the vendor if the ship had not been sold. The Board will be ready, if in any case of doubt they are placed in possession of the facts relating to the contemplated purchase of a vessel from another shipowner, to state whether the provisions of the section named would fall to be applied thereto.

8. It is believed that shipowners will, generally speaking, be able to agree allowances under sec. 40 (3) referred to in paragraph (3) above with the officials of the Board of Inland Revenue, but any taxpayer who is not satisfied with the decision of that Board is entitled to take his case before an independent Board of Referees which has been specially appointed to deal with these and other cognate questions.

DEPRECIATION ALLOWANCES IN RESPECT OF SECOND-HAND STEAMSHIPS FOR INCOME TAX AND EXCESS PROFITS DUTY.

NEW SCALE OF ALLOWANCES.

Age.		Expectation of Life.	Balance of Expectation of Life after deducting one year for Break-up Value.	Proportion of Cost after deducting Break-up Value to be written off each year for Depreciation.
Over.	Under.	Years.	Years.	Proportion.
0	1	25	24	1/24
1	2	24	23	1/23
2	3	23	22	1/22
3	4	22	21	1/21
4	5	21	20	1/20
5	6	20	19	1/19
6	7	19	18	1/18
7	8	18	17	1/17
8	9	17	16	1/16
9	10	16	15	1/15
10	11	15	14	1/14
11	12	14	13	1/13
12	13	13	12	1/12
13	14	12	11	1/11
14	15	11	10	1/10
15	16	11	10	1/10
16	17	11	10	1/10
17	18	11	10	1/10
18	19	10	9	1/9
19	20	10	9	1/9
20	21	10	9	1/9

Steamships over 21 years to be dealt with by negotiation according to the facts in each case.

EXAMPLES :—

				£
NEW SHIP.—First Cost	100,000
Less 1/25 for Break-up Value	4,000
				<hr/>
Balance allowed over 24 years	96,000
Annual Depreciation 1/24 for 24 years at				
£4,000 per annum	96,000
				<hr/> <hr/>

SECOND-HAND SHIP.—

1. Under 1 Year :

Expectation of Life, 25 years. Cost ..	150,000
Less Break-up Value—1/25th	6,000
	<hr/>
Balance to be allowed over 24 years ..	144,000
Annual Depreciation 1/24 for 24 years at £6,000 per annum	144,000
	<hr/> <hr/>

2. Under 14 Years :

Expectation of Life, 12 years. Cost ..	120,000
Less Break-up Value—1/12th	10,000
	<hr/>
Balance to be allowed over 11 years ..	110,000
Annual Depreciation 1/11 for 11 years at £10,000 per annum	110,000
	<hr/> <hr/>

EXCESS PROFITS DUTY.

INDUSTRIAL AND PROVIDENT SOCIETIES.

Regulations dated 31st December, 1917, made by the Commissioners of Inland Revenue, under sec. 26 (8) of the Finance Act, 1917.

1. These Regulations may be cited as the Industrial and Provident Societies' (Excess Profits Duty) Regulations, 1917.

2. In these Regulations (unless the context otherwise requires) the expressions—

Trade account,
Sales of goods,
Stocks at beginning [of year],
Stocks at end [of year],
Purchases of goods and carriage,
General expenses chargeable to trade (expenditure),

shall refer to and be construed in the same manner as the same expressions are construed respectively in the annual return prescribed by the Chief Registrar for Societies carrying on Industries and Trades under the Industrial and Provident Societies Acts, 1893 to 1913.

In the case of any Society to which sub-sec. 26 (8) of the Finance Act, 1917, applies, which is in receipt of profits other than profits from the sale of goods and commodities, the term

“sales” in these Rules shall be deemed to include rents and all receipts of whatever nature in connection with such profits.

3. The profit on commercial transactions with non-members for any accounting period or pre-war trade year shall be ascertained as follows :—

- (a) The sales of goods shown in the trade account shall be analysed and the sums included for sales to non-members ascertained.

From the total of sales to non-members deductions shall be made as follows :—

- (b) There shall be deducted so much of the items “stocks at beginning [of year]” and “purchases of goods and carriage” in the trade account and of any productive wages or other heads of expense taken into account in periodical valuations of stocks, which may be incurred in the period, as relates to the actual goods sold to non-members in the accounting period, if separately or specifically ascertainable ; or, if and so far as the separate figures are not so ascertainable, there shall be deducted a cost price which shall bear the same proportion to the cost price of all goods sold as the sales of goods to non-members bear to the total sales.

The cost price of all goods sold shall be taken to be the total of the “stocks at beginning [of year]” and “purchases of goods and carriage” and productive wages and other expenses taken into account at the periodical valuations of stock, less the “stocks at end [of year].”

- (c) There shall be deducted the specific expenditure permitted under the provisions of the Finance (No. 2) Act, 1915, which has been incurred in the period in respect of sales to non-members as ascertained under sub-sec. (a) of this Rule, if such expenditure be known, or so far as it is known, and so far as it may be necessary to be separately estimated and if not already included in sub-sec. (b) of this Rule, including in any such expenditure any dividend or discount to non-members.
- (d) There shall be deducted any further charges or overhead expenses (or parts thereof), additional to those allowed under sub-secs. (b) and (c) of this Rule, which are permitted under the provisions of the Finance (No. 2) Act, 1915, and which were incurred in respect of the sale to non-members and may not be specifically capable of allocation. The said charges and expenses shall bear the same proportion to the total of such charges as the sales to non-members bear to the total sales.

The amount by which the profit under this Rule for the accounting period exceeds the average profit similarly computed for the pre-war years adopted as standard years (proportionately reduced where the accounting period is less than a year) shall be deemed to be the Excess Profit arising on commercial transactions with non-members.

4. "Profit or surplus" shall be computed in the same way as profits would be computed under the Finance (No. 2) Act, 1915, for the purposes of Rule 10 of Part I. of the Fourth Schedule to that Act.

5. The profit or surplus arising from transactions with members shall be ascertained by deducting from the amount computed in accordance with Rule 4 of these Regulations, the profit on commercial transactions with non-members for the same period as computed under Rule 3.

6. "Turnover" shall be deemed to be the amount of sales of goods appearing in the trade account less the sales to non-members as ascertained under Rule 3 (a) of these Regulations.

7. The profit or surplus per pound sterling of turnover shall be the profit ascertained under Rule 5 of these Regulations divided by the turnover in pounds sterling as ascertained under Rule 6.

8. Where the amount per pound sterling ascertained under Rule 7 of these Regulations for the accounting period exceeds the average of the amounts similarly ascertained for the pre-war trade years adopted as the standard years under sub-sec. (8) of sec. 26 of the Finance Act, 1917, such excess shall be ascertained and when ascertained shall be multiplied by the number of pounds sterling ascertained as the turnover in the accounting period under Rule 6.

9. For the purpose of the assessment and charge of Excess Profits Duty, the excess profits arrived at respectively under Rules 3 and 8 of these Regulations shall be added together, provided that, where the computation under either rule results in a minus quantity, that quantity shall be treated as nil; and from the sum arrived at there may be made the following allowances by way of relief from duty before the duty is computed, that is to say:—

- (a) In respect of any increased capital under sub-sec. (1) of sec. 41 of the Finance (No. 2) Act, 1915, an allowance at the rate of 9 per cent. per annum on the increase of the apportioned capital employed in the accounting period over the average amount of the apportioned capital employed in the pre-war standard years, provided that the allowance so made shall not exceed the Excess Profits arrived at under Rule 3 of these Regulations.

The apportioned capital shall be such part of the total capital as (computed under Part III. of the Fourth Schedule to the Finance (No. 2) Act, 1915), as bears the same proportion to the whole as the sales to non-members bear to the total sales.

- (b) The allowance at the rate of £200 per annum provided by sec. 38 of the Finance (No. 2) Act, 1915.
- (c) In cases where the total average profits of the pre-war years chosen for the standard (ascertained according to Rule 4 of these Regulations) do not exceed £500 and where the profits of the accounting period, similarly computed, less any allowance in respect of increased capital under Rule 9 (a) of these Regulations, are less than £2,000 per annum, a further allowance as provided by sub-sec. (4) of sec. 26 of the Finance Act, 1917, and where the total average profits of the standard years exceed £500, an allowance reduced in accordance with that sub-section.
- (d) Any allowance which would fall to be made under sub-sec. (3) of sec. 40 of the Finance (No. 2) Act, 1915, if the trade or business were not owned by a society registered under the Industrial and Provident Societies' Acts.

10. Any Society requiring to be assessed under the provisions of sub-sec. (8) of sec. 26 of the Finance Act, 1917, shall give notice of such requirement not later than two months from the date when the Commissioners of Inland Revenue require a return under sec. 44 of the Finance (No. 2) Act, 1915, and shall furnish such accounts and particulars as the Commissioners may require in support of their return in respect of liability or non-liability under the said sub-sec. 8 of sec. 26 as the case may be, and to enable the apportionments under these Regulations to be made or examined.

11. In cases which present exceptional features the liability shall be computed as nearly as may be upon the foregoing principles.

By Order of the Commissioners of Inland Revenue,

R. V. NIND HOPKINS,

Secretary.

31st December, 1917.

MUNITIONS OF WAR ACT, 1915.

[5 & 6 GEO. 5. CH. 54.]

PART II.

Controlled Establishments.

4.—If the Minister of Munitions considers it expedient for the purpose of the successful prosecution of the war that any establishment in which munitions work is carried on should be subject to the special provisions as to limitation of employers' profits and control of persons employed and other matters contained in this section, he may make an order declaring that establishment to be a controlled establishment, and on such order being made the following provisions shall apply thereto :—

- (1) Any excess of the net profits of the controlled establishment over the amount divisible under this Act, as ascertained in accordance with the provisions of this Act, shall be paid into the Exchequer.

Supplementary Provisions as to the Limitation of the Profits of a Controlled Establishment.

5.—(1) The net profits of a controlled establishment shall be ascertained in accordance with the provisions of this section and rules made thereunder and the amount of profits divisible under this Act shall be taken to be an amount exceeding by one-fifth the standard amount of profits.

(2) The standard amount of profits for any period shall be taken to be the average of the amount of the net profits for the two financial years of the establishment completed next before the outbreak of the war or a proportionate part thereof.

(3) If in any case it appears or is represented to the Minister of Munitions that the net profits or losses of all or any other establishments belonging to the same owner shall be brought into account, or that the average under this section affords or may afford an unfair standard of comparison or affords no standard of comparison, the Minister may, if he thinks just, allow those net profits or losses to be brought into account, or substitute for the average such an amount as the standard amount of profits as may be agreed upon with the owner of the establishment.

The Minister of Munitions may, if he thinks fit, and shall, if the owner of the establishment so requires, refer the matter to be determined by a referee or board of referees appointed or designated by him for the purpose, and the decision of the referee or board shall be conclusive on the matter for all purposes.

(4) The Minister of Munitions may make rules for carrying the provisions of this section into effect, and these rules shall

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provide for due consideration being given in carrying out the provisions of this section as respects any establishment to any special circumstances such as increase of output, provision of new machinery or plant, alteration of capital or other matters which require special consideration in relation to the particular establishment.

MUNITIONS OF WAR (AMENDMENT) ACT, 1916.

[5 & 6 GEO 5. CH. 99.]

Punishment for False Statements, &c.

14.—For sec. 12 of the principal Act the following section shall be substituted:—

“12. If any person makes any false statement or representation, or gives any false certificate, or furnishes any false information—

- (a) for the purpose of evading any provision of this Act ;
or
- (b) in any proceedings before any munition tribunal, arbitration tribunal, referee, or board of referees under this Act or the rules made thereunder ; or
- (c) to the Minister of Munitions or any officer employed by him, for the purpose of obtaining or retaining employment, or of obtaining or retaining the services of any workman ;

or if any person alters or tampers with a certificate given under sec. 7 of this Act, or personates or falsely represents himself to be a person to whom such a certificate has been given, or allows any other person to have possession of any such certificate issued for his use alone, he shall be guilty of an offence and liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding £50.”

Provisions as to Offences.

18.—(4) In the case of a company being guilty of an offence under the principal Act, every director, manager, secretary, or other officer of the company, who is knowingly a party to the contravention or non-compliance constituting the offence shall also be guilty of the offence and liable to the like fine as the company.

(5) In subsec. (3) of sec. 15 of the principal Act after the words “ so far as relates to offences ” there shall be inserted “ and the enforcement of orders.”

Minor Amendments of Principal Act.

19.—In subsec. (3) of sec. 5 of the principal Act, after the words “affords no standard of comparison” there shall be inserted the words “or that no such average exists.” and after the words “if he thinks just, allow,” there shall be inserted the words “or require”; and in paragraph 9 of the Second Schedule to the principal Act, for the word “fourth,” there shall be substituted the word “third.”

Costs in Vexatious Proceedings.

22.—(2) Where a referee or board of referees to whom a matter has, under subsec. (3) of sec. 5 of the principal Act, been referred by the Minister of Munitions on the requirement of the owner of an establishment, considers that the requirement was unreasonable, the referee or board of referees may order that any costs payable by the owner of the establishment shall be paid out of the amount of profits divisible under the principal Act.

Exclusion of Arbitration Act, 1889.

23.—The Arbitration Act, 1889, shall not apply to any reference to any referee or board of referees under the principal Act or this Act or the rules made thereunder.

Short Title.

27.—This Act may be cited as the Munitions of War (Amendment) Act, 1916, and shall be construed as one with the principal Act, and the principal Act and this Act may be cited together as the Munitions of War Acts, 1915 and 1916.

MUNITIONS (LIMITATION OF PROFITS) RULES, 1915.

Rules made by the Minister of Munitions in pursuance of sec. 5 (4) of the Munitions of War Act, 1915, with respect to the Limitation of Profits of a Controlled Establishment.

The Minister of Munitions in pursuance of sec. 2 of the Rules Publication Act, 1893, hereby certifies that on account of urgency it is desirable that the following Rules should come into immediate operation, and he therefore in pursuance of the above section and sec. 5, sub-sec. 4, of the Munitions of War Act, 1915, hereby makes the following Rules, to come into operation forthwith as Provisional Rules :—

1. These Rules may be cited as “The Munitions (Limitation of Profits) Rules, 1915.”

2. In these Rules, unless the context otherwise requires :—

“ The Act ” means the Munitions of War Act, 1915.

“ The Minister ” means the Minister of Munitions for the time being.

“ Controlled Establishment ” means an establishment or part of an establishment in respect of which an order has been made by the Minister pursuant to sec. 4 of the Act.

“ Controlled Owner ” means the company, firm or person by whom a controlled establishment is for the time being owned or managed.

“ Period of Assessment ” means any period within the period of control for which profits are to be ascertained for the purposes of the Act.

“ Period of Control ” means the period commencing with the date specified by the Minister upon making an order under sec. 4 of the Act declaring an establishment to be a controlled establishment, and ending on the date when such establishment ceases to be controlled under the Act.

“ Standard Period ” means the two financial years of a controlled establishment completed next before the 4th August, 1914.

“ Standard Amount of Profits ” means the average of the amount of the net profits of a controlled establishment for the standard period ascertained or determined in accordance with the Act and these Rules, or a proportionate part thereof.

“ The Referee ” means the Referee or the Board of Referees referred to in sec. 5 (3) of the Act.

“ Audited ” means audited by a chartered or incorporated accountant or by an accountant approved in any particular case by the Board of Trade.

3. The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

NET PROFITS OF A CONTROLLED ESTABLISHMENT.

4. For the purposes of these Rules net profits of a controlled establishment shall be deemed to be profits which would have accrued to the controlled owner in respect of work done in such establishment, if such profits had been arrived at before bringing into account any sums in respect of income-tax or interest or (except so far as the Minister may otherwise allow, or as may be necessary in any case where net profits or losses of any other establishment belonging to the controlled owner are brought into

account for the purpose of the Act or these Rules) in respect of assets not employed in the controlled establishment, and (subject as aforesaid) after allowing proper selling, office, or other expenses, or apportionments thereof.

STANDARD AMOUNT OF PROFITS.

5. Within six weeks of being requested by the Minister so to do, the controlled owner shall deliver to the Minister such audited accounts and particulars in respect of the controlled establishment and of any other establishment belonging or partly belonging to the controlled owner as the Minister may require.

6. As soon as may be after the receipt by the Minister of the accounts and particulars referred to in Rule 5, or where any controlled owner has failed to supply the Minister with the same or any of them within the time appointed, then as soon as may be thereafter the Minister shall deliver to the controlled owner notice of the amount at which the Minister is prepared to agree the standard amount of profits, and unless within fourteen days thereafter the controlled owner shall serve upon the Minister notice of objection, the said amount shall be deemed to have been agreed and to be the standard amount of profits. If objection shall be so served and the Minister and the controlled owner are unable to settle the standard amount of profits by agreement, the matter shall be remitted by the Minister to the Referee for determination.

The amount which the Referee shall thereupon determine shall be deemed to be the standard amount of profits, whether the amount so determined be greater or less than the amount which the Minister was prepared to agree as aforesaid.

NET PROFITS FOR A PERIOD OF ASSESSMENT.

7. (i) The accounts in respect of a controlled establishment for any financial year or period which includes a period of assessment shall, unless the Minister otherwise allows or requires, be made up to dates corresponding to those to which, and on the same basis as nearly as may be, as the accounts in respect of that establishment for the standard period were made up.

(ii) Where any such financial year or period is greater than the period of assessment, the net profits for the period of assessment shall, unless the Minister otherwise allows or requires, for the purposes of these Rules, be taken to be the same proportion of the net profits for the financial year or period as the period of assessment is of the financial year or period.

(iii) Except so far as the Minister shall otherwise expressly declare in any particular case, no period of assessment shall be of greater length than one year, and if and whenever the Minister shall consider it necessary so to do he shall fix the dates at which any period of assessment shall be deemed to commence and terminate.

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8. Within three calendar months of the expiration of any financial year or period covering a period of assessment the controlled owner shall deliver to the Minister :—

- (a) Audited accounts and particulars for that financial year or period similar to those relating to the standard year or period required under Rule 5 ;
- (b) A statement setting out the adjustments (if any) which he claims should be made in the accounts so delivered in respect of any matter to which due consideration may be given under Rule 9, and whether he requests any addition to the standard amount of profits under Rule 10 ;
- (c) A declaration (which if so required by the Minister shall be a statutory declaration) made by the controlled owner and his auditor (or in the case of the controlled owner being an incorporated company, by the chairman or managing director or the responsible officer and the auditor of the company), declaring that the accounts are prepared strictly in accordance with Rule 7, except so far as is otherwise expressly therein declared, and that neither the controlled owner nor such officer has been party or privy to any transaction which might operate to prejudice the Exchequer in respect of excess profits under the Act.

9. In determining the net profits for any period of assessment, due consideration shall be given to, and any appropriate adjustments may be made in respect of all or any of the following matters, that is to say :—

- (a) Exceptional wear and tear of plant buildings and machinery ;
- (b) Capital expenditure specially incurred for the purpose of munitions work ;
- (c) The probable value to the controlled owner at the end of the period of control of any plant buildings or machinery erected or installed or other expenditure incurred for munitions work, since the 4th August, 1914
- (d) Special provisions or terms of any contracts entered into between the Government and the controlled owner ;
- (e) Any exceptional services rendered by the controlled owner in connection with the controlled establishment ;
- (f) Any increase in salaries or other emoluments of any persons engaged in the management or direction of the controlled establishment made since the end of the standard period, or any steps taken since the end of that period which might operate to decrease net profits ;
- (g) Generally any other matter which may appear to the Minister, or to the Referee, as the case may be, material to be taken into account ;

Any such adjustments may be made either by additions to or deductions from the standard amount of profits or by way of charges or disallowance of charges against profits for the period of assessment.

10. (i) For the purpose of ascertaining the excess of the net profits of a controlled establishment for any period of assessment in any case where (a) the average amount of capital employed in a controlled establishment during the period of assessment is greater than the average during the standard period, or (b) the volume of output of a controlled establishment for the period of assessment is proportionately greater than the volume of output for the standard period, there shall, at the request of the controlled owner, be added to the standard amount of profits whichever of the following sums may be the greater, that is to say :—

- (a) Such sum (in lieu of, or, at the discretion of the Minister, in addition to the one-fifth referred to in sec. 5 (1) of the Act) as shall be equivalent to interest at the rate of 8 per cent. per annum on such amount as the Minister shall decide is the amount of the additional average capital, or
- (b) Such sum (in lieu of, or, at the discretion of the Minister, in addition to the said one-fifth) amounting to such fraction of the additional net profits which in the opinion of the Minister might fairly have been earned in the standard period by an equivalent additional volume of output as the Minister shall decide will, in the circumstances of the case, afford a reasonable return in respect of the additional volume of output.

In determining what is additional average capital for the purposes of this Rule, capital provided by the Government shall be excluded, but temporary loans (other than capital so provided) and undivided ascertained profits employed in the business may be treated as capital.

For the purposes of this Rule the output of a controlled establishment for a period of assessment shall be deemed to be the same proportion of the output for the financial year or period which covers the period of assessment which the period of assessment is of that financial year or period.

(ii) The Minister shall, when delivering to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits for any period of assessment to which this Rule applies, state the sum which the Minister has decided shall be added under this Rule to the standard amount of profits.

If the controlled owner when serving on the Minister notice of objection to the amount at which the Minister is prepared to agree such net profits, shall also serve notice that he objects to the sum which the Minister has decided is to be added under this Rule to the standard amount of profits, the Referee, in determining the net profits for the said period of assessment, shall have the

like power to that conferred upon the Minister by this Rule and the sum (if any) added by the Referee to any standard amount of profits under this Rule may be greater or less than the sum which the Minister decided was to be added thereto.

11. As soon as may be after the receipt by the Minister of the accounts and particulars referred to in Rule 8 and such other accounts and particulars as the Minister may have required, or where any controlled owner has failed to supply the Minister with the same or any of them within the time appointed, then so soon as may be thereafter the Minister shall deliver to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits for the period of assessment, and unless within fourteen days thereafter the controlled owner shall serve upon the Minister notice of objection, the said amount shall be deemed to have been agreed and to be the net profits for such period of assessment. If objection shall be so served and the Minister and the controlled owner are unable to settle such net profits by agreement, the matter shall be remitted by the Minister to the Referee for determination.

The amount which the referee shall thereupon determine shall be deemed to be the net profits for such period of assessment, whether the amount so determined be greater or less than the amount which the Minister was prepared to agree as aforesaid.

12. In ascertaining or determining net profits for the final period of assessment proper adjustments may be made in respect of the whole period of control in regard to any matters referred to in Rule 9, so far as it may then be shown that sufficient adjustments have not been made in regard thereto in ascertaining or determining net profits for any previous period or periods of assessment.

13. (i) Any excess of the net profits of any controlled establishment for any period of assessment over the amount thereof divisible under the Act as ascertained or determined in accordance with the Act and these Rules shall be paid to the Minister for the credit of the Exchequer by the controlled owner within fourteen days after the amount of such excess has been ascertained or determined, or in any special circumstances within such extended time as the Minister may allow, and the Minister may make such allowance on such terms as he shall in each case think proper.

(ii) If in the opinion of the Minister a substantial sum will be payable to the Minister for the credit of the Exchequer as the excess of the net profits of any controlled establishment for any period of assessment, then notwithstanding that the amount of such net profits has not been ascertained or determined the Minister may, after the expiration of the period fixed by Rule 8 for the delivery of accounts, require provisional payment to be made to him for the credit of the Exchequer on account of such excess in such manner as he shall direct. and payment shall be made by the controlled owner accordingly.

(iii) If on making any such adjustments as are provided for by Rule 12, it shall be shown that a controlled owner has paid to the Minister for the credit of the Exchequer more than, having regard to such adjustments, he should have paid, the Minister shall on the application of the controlled owner refund to him the amount so overpaid.

GENERAL.

14. (i) All balance sheets, accounts and statements relating to any controlled establishment shall be subject to examination by an accountant nominated by the Minister, and the controlled owner shall at all reasonable times afford to such accountant proper facilities for inspecting all books, documents and records relating to the controlled establishment or any other establishment belonging or partly belonging to the controlled owner, which may be necessary to enable such accountant properly to examine and check any such balance sheets, accounts or statements and shall afford to any other person nominated by the Minister access to and proper facilities for inspecting any plant, stock and other assets of any such establishment and any documents and sources of information which may be necessary for the performance of his duties, and the controlled owner shall give to or procure for the said accountant all accounts and information and for any such other person all information which may be necessary for such purposes. The controlled owner shall at all times furnish to the Minister or to the Referee all such documents and information as they may respectively require with regard to the controlled establishment or any other establishment belonging to the controlled owner.

(ii) If any question shall arise as to whether any inspection, extract or information required by any such accountant or such other person under this Rule is necessary for any such purpose, the matter in difference shall on the application of either party thereto, or may at the instance of the Minister, be referred to and shall be determined by the Referee.

15. Any time limited by these Rules may be extended by the Minister from time to time and that notwithstanding that the time limited has expired.

16. In the event of a Board of Referees being appointed or designated by the Minister under the Act, two members of the Board shall constitute a quorum.

17. The decision of the Referee on any matter referred to him shall be conclusive on the matter for all purposes.

18. Any notice or other document required by these Rules to be served or delivered may be sent through the post properly addressed in a prepaid registered letter, and unless the contrary is proved, shall be deemed to have been served or delivered in the ordinary course of post.

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19. Any failure to comply with any provision of these Rules after being required so to do by the Minister shall be an offence under the Act.

20. These Rules shall come into force on the 15th day of September, 1915.

Signed by order of the Minister of Munitions this 15th day of September, 1915.

(Signed) H LLEWELLYN SMITH,

General Secretary to the Ministry of Munitions.

MINISTRY OF MUNITIONS,

6, WHITEHALL GARDENS, S.W.

MUNITIONS EXCHEQUER PAYMENTS RULES, 1917.

THE MUNITIONS EXCHEQUER PAYMENTS RULES, 1917, DATED AUGUST 3, 1917, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SEC. 24 OF THE FINANCE ACT, 1917 (7 & 8 GEO. 5, c. 31).

1. These Rules may be cited as the Munitions Exchequer Payments Rules, 1917.

2. In these Rules "the Commissioners" means the Commissioners of Inland Revenue; "the Act" means the Finance Act, 1917; unless the context otherwise requires, "The Minister," "Controlled Owner," "Period of Assessment" and "The Referee" have the same respective meanings as in the Munitions (Limitation of Profits) Rules, 1915; and "Munitions Exchequer Payments" has the same meaning as in the Finance Act, 1917.

3. The statutory provisions and rules enumerated in the Schedule to these Rules shall, except so far as they are repugnant, apply to munitions Exchequer payments as they apply to excess profits duty, and any reference to a person in such provisions and rules may as respects munitions Exchequer payments be read as if it were a reference to a controlled owner.

4. The provisions of the Munitions (Limitation of Profits) Rules, 1915 (hereafter called "the Rules of 1915,") and the Munitions (Limitation of Profits) Rules, 1915 (Amendment) Rules, 1917 (hereinafter called "the Munitions Rules, 1917,") shall, except those of Rules 6, 11, 12 and 13 of the Rules of 1915 and Rule 10 (ii) of those Rules as set out in Rule 4 of the Munitions Rules, 1917, and except so far as they are repugnant to the provisions of the Act or as is by these Rules otherwise expressly provided, continue to apply to the assessment and collection of munitions Exchequer payments. Provided that

nothing in this Rule shall be held to deprive a controlled owner of any appeal in any matter in which an appeal to the Referee is allowed by the Rules of 1915, as amended by the Munitions Rules, 1917.

5. The provisions of sec. 44 (1) of the Finance (No. 2) Act, 1915, and of so much of sec. 44 (2) thereof as relates to the penalty for failure to furnish a proper return or to furnish particulars in compliance with any requirement of the Commissioners, shall apply for the purposes of munitions Exchequer payments as they apply for the purposes of Excess Profits Duty subject to the necessary modifications and without derogation of the provisions of Rules 5, 8 and 14 of the Rules of 1915. But no controlled owner shall be under any obligation to furnish to the Commissioners any return or other particulars if and so far as he satisfies the Commissioners that he has already furnished such return or particulars to the Minister in the form required for purposes of assessment of munitions Exchequer payments.

Any requirement of the Minister made before the passing of the Act, and not met at that date may be deemed to be a requirement by the Commissioners.

6.—(i) If at the time of the commencement of the Act any munitions Exchequer payments have been assessed by the Minister, but have not been collected, the Commissioners shall serve on the controlled owner a notice stating the amount of the munitions Exchequer payments so assessed, the amount of the munitions Exchequer payments remaining to be paid, and the manner in which such amount is to be paid; and such munitions Exchequer payments remaining to be paid shall be payable by such owner on or before the date specified in the notice, provided that such date shall be at least 28 days from the date when the payments were assessed by the Minister.

(ii) Any such notice may be served on the controlled owner in like manner as a notice of assessment may be served.

(iii) For the purposes of these Rules munitions Exchequer payments shall be deemed to have been assessed by the Minister on the date of service of the notice by the Minister under Rule 11 of the Rules of 1915, of the amount at which the Minister is prepared to agree the net profits for the period of assessment and a certificate from the Minister that such notice has been given shall be sufficient proof of such assessment.

Provided that any sum that has been required by the Minister to be paid provisionally for the credit of the Exchequer under Rule 13 of the Rules of 1915, shall be deemed for the purposes of these Rules to be munitions Exchequer payments assessed by the Minister on the date on which the notice requiring such provisional payment was served.

7. Where any agreement exists between the Minister and the controlled owner as to the standard amount of profits or as

to the amount of any allowance, adjustment or relief to be made in the assessment of munitions Exchequer payments, the amount of such standard, allowance, adjustment or relief shall be adopted by the Commissioners for the purpose of assessment.

8. Where the controlled owner is aggrieved by any assessment of munitions Exchequer payments made upon him by the Commissioners on the ground—

- (a) that the standard amount of profits fixed by the Commissioners should have been fixed under sec. 5 (3) of the Munitions of War Act, 1915, as amended by any later enactment, and has not been so fixed, or if fixed under that sub-section is erroneous.
- (b) that no allowance or adjustment or no sufficient allowance or adjustment has been made under Rule 9 (d), (e) (f) or (g) or Rule 10 of the Rules of 1915, as amended by the Munitions Rules, 1917; or
- (c) that the Commissioners have not given due effect to any agreement which has been reached between the Minister and controlled owner as to the amount of any allowance, adjustment or relief to be made in the assessment of the munitions Exchequer payments;

the controlled owner may within 30 days after service of the notice of assessment give notice of objection to the officer of the Commissioners named in that notice, stating the ground of his objection and the amendment required, and, unless the objection is disposed of by agreement, the matter shall be referred by the Commissioners for the opinion of the Minister to whose decision thereon the Commissioners shall give effect. If the controlled owner is dissatisfied with the decision of the Minister in any matter referred to in paragraphs (a), (b) or (c) of this Rule in which an appeal to the Referee is allowed under Rule 6 of the Rules of 1915, or under paragraphs (d), (e), (f) or (g) of Rule 9 of the Rules of 1915, or under Rule 10 of those Rules as amended by the Munitions Rules, 1917, and within 30 days after notice from the Commissioners of such decision gives notice to the Commissioners that he requires the matter to be referred to the Referee, the Commissioners shall refer the matter to the Referee, whose decision shall be final and conclusive.

9.—(i) Where the controlled owner is aggrieved on any ground on which an appeal to the Referee is allowed under the Rules of 1915, as amended by the Munitions Rules, 1917, other than those specified in Rule 8, by an assessment of munitions Exchequer payments made on him by the Commissioners, he may, within 30 days after service of the notice of assessment, give notice of objection to the officer of the Commissioners named in the notice of assessment stating the ground of his objection and the amendment required, and unless the appeal is otherwise disposed of by agreement between the controlled owner and the Commissioners,

the notice shall be referred by the Commissioners to the Referee, who shall thereupon determine the assessment at an amount which may be greater or less than the amount stated in the notice of assessment. Nothing herein shall entitle the controlled owner to appeal as respects the standard amount of profits if such standard has been agreed or is deemed to have been agreed with the Minister prior to the passing of the Act.

(ii) The provision contained in the third paragraph of sub-sec. (5) of sec. 45 of the Finance (No. 2) Act, 1915, shall apply in the case of appeal under this Rule as it applies in the case of an appeal under that section.

10. Where the controlled owner is aggrieved at the amount of any munitions Exchequer payments assessed before the commencement of the Act but not then collected, on any ground on which an appeal to the Referee is allowed under the Rules of 1915, as amended by the Munitions Rules, 1917, he may give notice of objection or appeal to the Commissioners as if, and within such time as if, the notice required by these Rules to be given as to the amount remaining to be paid were a notice of assessment, and the Commissioners shall deal with such notice of objection or appeal as if it were a notice under Rule 8 or 9 of these Rules as the case requires, but the Minister or the Referee if such notice be referred to him may, if he sees fit, decline to consider the objection or appeal if he is of opinion that the controlled owner had full opportunity of giving notice of objection before the commencement of the Act and ought to have availed himself of that opportunity.

Provided that if at the time of the commencement of the Act such a notice of objection had been duly given but had not been determined (or if notice of objection is given within the time prescribed but between the time of the passing of the Act and the issue of the notice under Rule 6 of these Rules) it shall be dealt with by the Commissioners as if it were a notice of objection or appeal under the Rules to an assessment made by them.

11. Any matter which under these Rules is to be referred to the Minister or the Referee may be so referred by the transmission by the Commissioners to the Minister or Referee, as the case may be, of the notice of objection or appeal or a copy thereof together with any particulars relating to the matter which may appear to the Commissioners necessary for the hearing of the objection or appeal.

12. The provisions of sec. 45 (6) of the Finance (No. 2) Act, 1915, shall apply to munitions Exchequer payments which are the subject of any objection, reference or appeal as they apply to excess profits duty which is the subject of appeal under that section.

13. Any allowances under Rule 9 of the Rules of 1915, which fall to be determined in relation to a total period of time ending

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after the period in respect of which munitions Exchequer payments may be assessed and to be apportioned, shall be apportioned *pro rata* in the manner directed in sec. 27 of the Act for the purpose of ascertaining the allowance to be taken into account in computing munitions Exchequer payments; and the reference to the end of the period of control in Rule 9 (c) shall be construed as if it were a reference to the date at which allowance for exceptional depreciation and obsolescence under sec. 40 (3) of the Finance (No. 2) Act, 1915, falls, or may fall, to be finally determined.

Provided that upon any such final determination, any allowance which may have been provisionally made under the said Rule 9 and apportioned in respect of the period ending on the 31st December, 1916, shall be revised and the appropriate adjustment made by repayment to the controlled owner or further payment of munitions Exchequer payment as the case may require, and any appeal may be made as respects such adjustment as if it were an assessment of munitions Exchequer payments.

14. Any officer of the Commissioners may for any purpose in connection with the assessment and collection of munitions Exchequer payments and appeals and references thereon make use of any returns, correspondence, schedules, accounts, statements or other documents to which he has had or may have lawful access for the purposes of income tax or excess profits duty or which may have been furnished to the Minister for the purposes of munitions Exchequer payments.

15. Any sum deposited for the purpose of satisfying munitions Exchequer payments or excess profits duty may be applied in satisfaction of either or both charges.

By order of the Commissioners of Inland Revenue,

R. V. NIND HOPKINS,

3rd August, 1917.

Secretary.

Schedule.

Finance (No. 2) Act, 1915:—

Sec. 44 (3).

Sec. 45 (1).

Sec. 45 (3).

Finance Act, 1916:—

Sec. 54.

Regulations prescribed by the Commissioners of Inland Revenue under sec. 45 (7) of the Finance (No. 2) Act, 1915:—

Regulation 1 and the Schedule to the regulations except so far as the Schedule relates to sec. 10 (2) of the Finance Act, 1914, and sec. 31 of the Finance (No. 2) Act, 1915.

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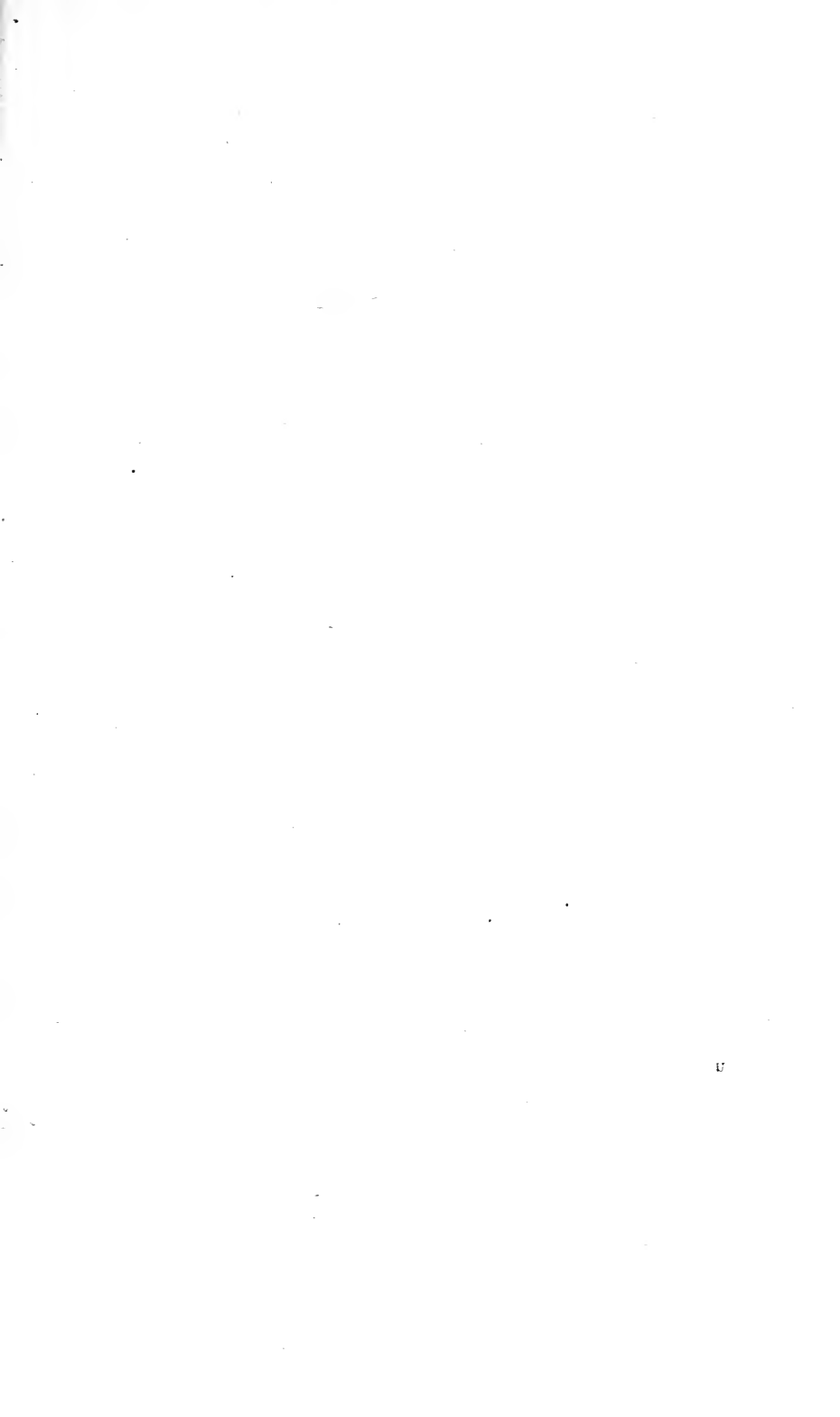
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